



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

LEW. Eng. Ref 48 e.

Page 3

THE
History and Law
OF
CHURCH SEATS,
OR
PEWS.

BY
ALFRED HEALES, F.S.A.,
PROCTOR IN DOCTORS' COMMONS.

Book II.—LAW.



LONDON:
BUTTERWORTHS, 7, FLEET STREET,
Law Publishers to the Queen's most excellent Majesty.
1872.

LONDON :
PRINTED BY C. ROWORTH AND SONS,
NEWTON STREET, W.C.

INTRODUCTION TO BOOK II.

ORIGINALLY Churches and Chapels in England were altogether unprovided with seats for the Congregation. In the Chancel there were seats for the Clergy and others taking part in the performance of Divine Service; and especially in the Churches of Conventual and Collegiate bodies (for whom extremely long, as well as frequent Services were appointed), stalls were provided as a matter of necessity.

To Monarchs and Persons of high position, and Patrons of Churches, seats were permitted by authority, and from an early period such seats were in the Chancel.

Gradually seats for the Congregation at large, were introduced into the body of the Church; and it has been our endeavour to trace their Early History in BOOK I. of the present Work.

There is no Ecclesiastical or Civil Law under which such seats were introduced, nor is there any by which their use is regulated, except such as in course of time has grown up; and since it is found that different considerations affect different classes of buildings, this part of our Work has been divided accordingly.

Cathedrals stand alone. Scarcely any claims to, or legal questions respecting the seats in them have ever been raised. This branch of the subject forms PART A.

The bulk of the Work is necessarily occupied by the considerations respecting the seats in Parish Churches, amounting in number to many thousands, scattered throughout the length and breadth of the land; their dependant Chapels of Ease are ruled by nearly like considerations. This portion of the subject forms PART B., and comprises three DIVISIONS; **a.** Ordinary Seats, **b.** the Parson's Seat, and **c.** Private Seats.

Of these DIVISIONS, **a.** Ordinary Seats, is separated into two Chapters: Chapter I. treats of the Structure, and comprises the consideration of the introduction, building, repair, and removal of such seats: and Chapter II. of their Use and Occupation, whether in common or by a personal allotment by the authority of the Ordinary, either directly or indirectly; and the rights acquired thereby. Since the period in which the Law affecting this part of the subject gradually grew up, there has, especially of late, been a very great change in the circumstances; so that what might at one time have been proper, may be now inconvenient or objectionable, and some modification or reform will, no doubt, sooner or later be found desirable. The Act for the Abolition of Compulsory Church Rates will produce an effect tending in that direction. It is not within the scope of the present Work to consider the advantages and disadvantages of the present system. The Parson's Seat being subject to different considerations forms DIVISION **b.**

DIVISION **c.** is separated into two Chapters, of which Chapter I. treats of Seats held, or claimed to be held, under *Faculties* granted by the Ordinary to individuals and their

families or successors. The nature of Faculties, and their legal force, and the considerations which should guide the discretion of the Ordinary in making such grants, are comprised herein. The increasing inconveniences arising from such grants have been repeatedly noticed judicially, and no doubt, sooner or later, will lead to the abandonment of the system. Chapter II. treats of rights by *Prescription*; they arise from two separate sources, which have, however, not always in Law been kept so distinct as might have been desirable. The one is where a founder of a church, or other person, retained to himself, or built a specific part of the church, for his own use and that of his family and successors: and as such fact is not very frequently capable of absolute proof, it may (subject to certain requirements) be legally presumed to have been the case. The other is where, in default of any better title than use, it is presumed that such use commenced and continues under the authority of a Faculty, granted by the Ordinary, but no longer in existence. Under the head of *Prescription* are comprised the facts necessary to make a valid claim, what proof is requisite, where such questions are triable, and the ownership of the materials of the structure.

Next for consideration is PART C., which treats of—
a. Seats in Private Chapels and unconsecrated Buildings used for Divine Service; but respecting them very few legal points have been decided:—and **b.** Proprietary Chapels, a modern class of Building in which the use and control of the Seats differ little from that of places of Public Entertainment.

The remainder of the work, **PART D.**, relates to the seats in Churches built under the authority of Acts of Parliament passed, at a modern date, with the object of relieving Spiritual Destitution, which in the course of time had risen to an alarming height. Special necessities require special treatment ; but it often happens that what is introduced as a temporary measure, permanently remains. **DIVISION a.** relates to General Church-Building Acts, and **b.** to Churches built under Private Acts.

LIST OF AUTHORITIES

REFERRED TO IN BOOK II.

ACTS OF PARLIAMENT.

21 Edward III. part	7	3 & 4 Victoria cap.	86
4 & 5 William & Mary .. cap.	12	6 & 7 " "	37
51 George III. "	151	7 & 8 " "	56
58 " " "	45	7 & 8 " "	94
58 " " "	54	8 & 9 " "	70
59 " " "	134	9 & 10 " "	68
3 George IV. "	72	9 & 10 " "	88
5 " " "	86	11 & 12 " "	37
5 " " "	108	14 & 15 " "	97
7 & 8 " " "	72	18 & 19 " "	127
1 & 2 William IV. "	38	19 & 20 " "	55
2 & 3 " " "	61	19 & 20 " "	104
2 & 3 " " "	71	23 & 24 " "	142
1 & 2 Victoria "	107	31 & 32 " "	102
2 & 3 " "	49	31 & 32 " "	109
3 & 4 " "	60	32 & 33 " "	94

ADDAMS, Eccles. Rep.

ADOLPHUS & ELLIS, K. B. Rep.

AYLIFFE, Parergon.

BACON, Abridgement.

BARNEWALL & ADOLPHUS, King's Bench Rep.

BARNEWALL & ALDERSON, King's Bench Rep.

BARNEWALL & CRESSWELL, King's Bench Rep.

BINGHAM, Common Pleas Rep.

BLACKSTONE, Commentaries.

BOSWORTH, Anglo-Saxon Dic.

BROOKE, Abridgement.

BROWNLOW & GOLDESBOROUGH, Common Pleas Rep.

BULSTRODE, King's Bench Rep.

BUNBURY, Exchequer Rep.

BURN, Ecclesiastical Law.

BURROWS, King's Bench Rep.

BURTON, Real Property.

CAMPBELL, Nisi Prius Rep.

CARRINGTON & PAYNE, N. P. Rep.

COKE, Institutes.

COKE, King's Bench Rep.

- COKE upon Littleton.
 COLLIER, Ecclesiastical History.
 COMMISSION on Ecc. Courts Rep.
 COMMON BENCH, 2 Jac.
 COMYN, Digest.
 COMYN, King's Bench Rep.
 COWPER, King's Bench Rep.
 CROKE, King's Bench Rep.
 CROMPTON, MEESON & ROSCOE,
 Exchequer Rep.
 CURTEIS, Ecclesiastical Rep.
 DEGGE, Parson's Counsellor.
 DOUGLAS, King's Bench Rep.
 DOWLAND & RYLAND, K. B. Rep.
 DOWLING, Practice Cases.
 EAST, King's Bench Rep.
 EXPOSITION of Termes of Lawe.
 FITZHERBERT, Natura Brevium.
 FORREST, Exchequer Rep.
 FORTESCUE, King's Bench Rep.
 FRANCES, De Cathedralibus.
 GALE & DAVISON, K. B. Rep.
 GIBSON, Codex.
 GODBOLT, King's Bench Rep.
 HAGGARD, Consistory Rep.
 HAGGARD, Eccles. Rep.
 HARRISON & WOLLASTON, Com-
 mon Pleas Rep.
 HETLEY, Common Pleas Rep.
 HOBART, King's Bench Rep.
 JOHNSON, Canons.
 JOHNSON, Clergyman's Vade me-
 cum.
 JONES, T., King's Bench Rep.
 JURIST, New Series.
 KEBLE, King's Bench Rep.
 KENNETT, Parochial Hist. of Am-
 broden.
 KENYON (LORD), K. B. Cases.
 LATCH, King's Bench Rep.
 LATHBURY, Ed. of Collier's Eccles.
 History.
 LAW JOURNAL REPORTS, New
 Series, Queen's Bench.
- LAW REPORTS,
 Admiralty and Eccles.,
 Common Pleas.
 Equity,
 Exchequer,
 LAW TIMES REPORTS, New Series.
 LEE, Eccles. Rep.
 LEVINZ, King's Bench Rep.
 LITTLETON, Common Pleas Rep.
 LUSHINGTON, MS. opinion.
 LUTWYCHE, Common Pleas Rep.
 MANNING & RYLAND, K. B. Rep.
 MEESON & WELSBY, Exch. Rep.
 MODERN, King's Bench Rep.
 MOODY & ROBINSON, N. P. Rep.
 MOOR, King's Bench Rep.
 MOORE, Privy Council Rep.
 NEVILLE & MANNING, K. B. Rep.
 NEVILLE & PERRY, K. B. Rep.
 NOY, King's Bench Rep.
 OLIPHANT on Pews.
 OUGHTON, Ordo Judiciorum.
 PALMER, King's Bench Rep.
 PHILLIMORE, Eccles. Rep.
 PHILLIMORE, SIR R. J. (unpub.)
 POPHAM, King's Bench Rep.
 PRIDEAUX, Guide to Church-
 wardens.
 QUEEN'S BENCH, Rep.
 RAYMOND, LORD, K. B. Rep.
 RAYMOND, SIR THOS., K. B. Rep.
 REFORMATIO LEGUM ECCLES.
 REPORT on Ecclesiastical Courts.
 REPORT on Spiritual Destitution.
 ROBERTSON, Ecclesiastical Rep.
 ROGERS, Ecclesiastical Law.
 ROLLE, Abridgement.
 ROLLE, King's Bench Rep.
 SALKELD, King's Bench Rep.
 SHELFORD, Real Property.
 SIDERFIN, King's Bench Rep.
 SIMONS, N. S., Vice Chanc. Rep.
 SOLICITOR'S JOURNAL.
 SPELMAN, Concilia.

STEPHEN, Commentaries.
SWABEY, MS. opinion.
TAYLOR, on Evidence.
TERM REPORTS, King's Bench.
TYRERWHIT, Ed. of Prideaux.
VERNON, Chancery Rep.
VESEY, Chancery Rep.
VICAR-GENERAL'S BOOKS (un-
pub.)
VINEY, Abridgement.
WATSON, Clergy Law.

WEEKLY REPORTER.
WILKINS, Concilia.
WILLIAMS, PEEER, Chancery Rep.
WILSON, King's Bench Rep.
WINCH, Common Pleas Rep.
WOOD, Institute.
WORCESTER ECCLES. REGR., Bul-
lingham.
YEAR BOOK, 32 Edward I.
9 Edward IV.
8 Henry VII.
YOUNGE & JERVIS, Exch. Rep.

ERRATA IN BOOK II.

Page 23, note (g).—Sieveking *v.* Evans & K.; should be, Sieveking & Evans *v.* Kingsford.

„ 33, „ (s).—Anon. p. 12; *Mod.* p. 401; should be, Anon., 12 *Mod.* p. 401.

„ 68, „ (a).—Reference to Comyn's *Digest*, N. 6, should be N. 116.

BOOK II.—LAW.

PLAN OF THE WORK.

Chapter.

- I. Early arrangement of Churches.
- II. Early names of Church Seats.
- III. Early use of word PEW.
- IV. Clergy Seats; Early Seats contd.
- V. Occupation of Seats.
- VI. Earliest Appropriations.
- VII. Faculties.
- VIII. Chantry Chapels.
- IX. Separation of Sexes.
- X. Corporation and Special Pews; Payment; Locks.
- XI. Architectural History.
- XII. Comfort; Extravagance.

Division.

Part.

Book.

Book I. HISTORY

CHURCH SEATS, OR PEWS.

A. CATHEDRALS.

- B. PARISH CHURCHES AND CHAPELS OF EASE

- a. Ordinary Seats ..
- b. Parson's Seat.

- c. Private Seats

- I. Faculty.
- II. Prescription.

Book II. LAW.

- C. PRIVATE CHAPELS

- a. Private Chapels.

- b. Proprietary Chapels.

- D. CHURCHES built under ACTS OF PARLIAMENT

- a. General Acts.

- b. Private Acts.

The History and Law OF CHURCH SEATS, OR PEWS.

BOOK II.—LAW.

PART A.

CATHEDRALS.

PART A. CATHEDRALS.

1. A CATHEDRAL is the parish church of the whole diocese, because it is the church of the bishop, who has the cure of souls of the whole diocese; and though all of the diocese may receive the Sacrament or be married there, they are not bound to do so (*a*), nor are they liable for its repair, except in cases where all other funds fail. They have not, therefore, in a cathedral any parochial rights.

Cathedral is parish church of the diocese; but its use confers no parochial rights.

2. As to the seats in a cathedral, Dr. Todd, the Vicar-General of the diocese of Derry, said he could find nothing in the books of our law on the subject; but he referred to the work of Frances, *De Cathedralibus*, which, speaking of the nave of the cathedral, to which alone the laity should properly be limited, says to the effect that if there should be there any forms or benches for the laity, and it be

Seats in cathedral regulated by bishop; but objectionable.

(*a*) Frances, *De Cathedralibus*, p. 345.

PART A.
CATHEDRALS.

Seats are only
ex gratiâ.

Ought not to
be allotted;

but probably
allotment by
bishop not
questionable.

If parochial as
well as cathe-
dral, parochial
arrangements
follow.

On transfer of
parochial
rights from
cathedral to
new church,
claims for seats
to be examined.

necessary to regulate them, the regulation of them belongs to the bishop; but seats ought not to be permitted (*b*).

3. The laity can possess no right to seats or benches, which are only permitted, *ex gratiâ*, to be introduced (*c*).

4. It would appear, then, to be the law that seats in the nave of a cathedral ought not to be allocated at all, and that the nave should be free for all persons of the diocese; at all events, the inhabitants of the parish in which the cathedral is placed have no special rights in the cathedral, and if the bishop were to allocate a pew in a cathedral to any person in the diocese, it is probable that no one would have a right to question it (*d*).

5. When a church is parochial as well as cathedral (*i. e.* from its origin), the distribution of seats must be ordered, as in ordinary parish churches, by the churchwardens, but subject to the control of the ordinary. Non-parishioners have no rights therein (*e*).

6. Where any part of any cathedral has been accustomed to be used as a parochial church, the Church Building Commissioners, with consent of Ecclesiastical Commissioners (*f*), the bishop, dean and chapter, patron and incumbent, may transfer the rights, &c. to any new church in the parish of which that part of the cathedral had been held to be the parish church; and an examination into claims to seats by faculty or prescription, and an assignment to successful claimants is to take place in like manner as where the rights of an old parish church are transferred to a new building (*g*).

(*b*) Derry Cathedral, *Law T. Rep.*, 8 *N. S.* p. 863.

(*c*) Frances, *De Cath.*, p. 79.

(*d*) Derry Cathedral, *Law T. Rep.*, 8 *N. S.* p. 864.

(*e*) Ibid.

(*f*) The two bodies of Commissioners have been amalgamated by act of parliament, 19 & 20 Vict. c. 55.

(*g*) 8 & 9 Vict. c. 70, ss. 4 & 1 (1845).

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION a.

ORDINARY SEATS.

CHAPTER I.

STRUCTURE.

CAP. I.
STRUCTURE.

7. SOON after the conversion of the English Saxons there were several churches erected in the respective dioceses, to which the converts who lived remote from the cathedral repaired and made their offerings; but these were nearly equivalent to chapels of ease, and it is evident that the clergy were not fixed upon any parochial possessions, and as yet there was no such thing as fixed cures or tithes (*a*).

Earliest English churches like chapels of ease.

8. Now as kings founded cathedrals for the benefit of their whole dominions, so afterwards great men founded parochial churches for the convenience of themselves and their dependants, and churches and chapels were erected and a maintenance settled for the incumbent, the bounds of the parochial division being commonly the same with those of the founder's jurisdiction, or conterminous with a manor. Some foundations of this nature were as early as

Foundation of parish churches and parishes, very early.

(*a*) Collier's *Eccl. Hist. of Gt. Brit.*, Vol. I. p. 229; and Lathbury's *Ed.*, Vol. I. p. 539 et seq.

CAP. I.
STRUCTURE.

Bishop had power over church, clergy, and revenues.

Endowment required.

Parishes settled prior to Norman conquest.

Rights and duties of parishioners acquired by custom.

Originally no seats in nave and aisles of churches.

the time of Justinian the Emperor; they are likewise mentioned by Bede about A.D. 700 (*b*).

9. Not only was the bishop's consecration of these rural churches to precede their use, but his consent was likewise necessary to their erection. His approbation of the priest who was to officiate was necessary; and, as he could not be admitted, so neither could he be ejected without the consent of the diocesan. The bishop's power went still further, and extended to the revenues, tithes and oblations with which they were endowed (*c*).

10. None of the auxiliary churches were allowed to be built before the settlement of a sufficient endowment for the maintenance of a priest. The endowments of those times consisted generally in a certain portion of land, in slaves to till the glebe, and in oblations made by the tenants within the precincts of the parish (*c*).

11. Thus in process of time the country became portioned out and existing parishes were subdivided. Before the reign of King Edward the Confessor the parochial divisions were so far advanced that every person might be traced to the parish to which he belonged; and the distinction of parishes, as they now stand, appears to have been settled before the Norman conquest (*c*).

12. By custom, the inhabitants of a parish acquired the right to attend the church and avail themselves of the spiritual advantages which had been thus provided for the parish; and, at the same time, the duty of keeping the building in repair and providing the necessaries for Divine service devolved and became a legal obligation upon them.

13. From the entire absence of mention by any early writers of seats for the congregation in church, or any representation of them in ancient paintings and illumina-

(*b*) Collier's *Ecol. Hist. of Gt. Brit.*, Vol. I. p. 229; and Lathbury's Ed., Vol. I. p. 539 et seq.

(*c*) Collier's *Ecol. Hist. of Gt. Brit.*, Vol. I. pp. 230 & 231.

tions or any existing early example, there can be no doubt that there were formerly none such existing in that part of the building which was intended for the congregation (viz., the nave and aisles) for many centuries from the establishment of the Christian religion, and in fact until near the fifteenth century. The earlier records of them are more particularly referred to in Book I. of the present work.

**CAP. I.
STRUCTURE.**

Originally no seats in nave and aisles of churches.

14. When introduced they for some time were, with the exception of some held by prescription, merely stools or moveable seats. They are distinctly mentioned as moveable in the earliest case (1493) in which the subject appears in any legal proceedings. William Fitzwalter sued on a writ of trespass, for that the defendant had, with force and arms, broken and carried away his seat in the church. The court said that unless a man and his ancestors had been accustomed to have a fixed seat from time of prescription, it seemed that any one might remove the seat for his own ease and standing, for it was a common nuisance to all, because it hindered them from their standing (*d*). The court also said that it was a novel matter, and the judgment would serve as a precedent for all others.

Moveable seats at first introduced.

Case in 1493.

15. Degge (*e*) says that "if the seat be loose he that built it may remove it at his pleasure, as I conceive."

Loose seats removable by owner.

16. Prideaux says rather singularly that the first seats permitted to be used were moveable forms, for the ease of the parishioners to sit during those parts of the service for which kneeling or standing were directed by the ritual of the times (*f*).

For the ease of the parishioners.

(*d*) *Year Book*, 8 Hen. VII., 12. Issint, s'il & ses auncestres n'ont us dast tiel sedule là de temps de prescription, semble *que* chescun home purra prendre le sedule *que* est del esglise & ceo remove pur son ease & standing; car c'est al commen nusans de eux, car ils ne purront avoir lour standing pur tielx sedules, s. setes en el esglise.

(*e*) Degge's *Parson's Counsellor*, p. 210 (Pt. I. cap. 12).

(*f*) Tyrr. *Prid.*, p. 115.

CAP. I.
STRUCTURE.

Moveable seats
said to have
been the pro-
perty of the
incumbent.

But all proof
wanting:
Therefore very
doubtful.

Early fixed
seats probably
erected with-
out authority.

17. It is stated by Kennett that these moveable seats were the property of the incumbent, and in all respects at his disposal; and they were frequently bequeathed by incumbents to their successors, or others as they thought fit (*g*).

18. And this statement has been followed by all subsequent writers without reference to a single other authority in corroboration. The writer of the present Work has not discovered any such authority or bequest. It seems highly improbable, from the reference in the case of Fitzwalter (above mentioned) to the novelty of the question, and private seats being then declared a nuisance to the rest of the parishioners, that the clergy would have been permitted to maintain them; nor, indeed, is it apparent what object they could have in wishing to do so. The examples stated by Kennett to occur in Wills of incumbents, may have been for clerical use in the chancel, as it is probable that many chancels were altogether destitute of, or inadequately provided with stalls.

19. Whether, at an early period, pews or fixed seats were put up with or without any authority, probably can never be ascertained with certainty, but the absence of early record of any such authority furnishes an exceedingly strong presumption that they did not possess it until a comparatively recent date. It would appear that as the ordinary has always possessed control over the church and matters connected with it, he naturally claimed authority over the seats when the subject was brought before him (*h*); and the Courts of Common Law have always acknowledged questions respecting seats to belong

(*g*) Kennett's *Paroch. Antiq. of Ambrosden*, p. 596.

(*h*) As in the Canons and Constitutions from the 13th century down-

exclusively to ecclesiastical jurisdiction, except in such cases as involved a Common Law right by prescription.

CAP. I.
STRUCTURE.

20. The necessity of obtaining from the ordinary his licence or faculty for all matters affecting the structure of a church or in its fittings or arrangements, before any alterations can legally be made, is now generally admitted, though perhaps the same strictness was not always observed: the erection or alteration of arrangement of seats is one of such matters.

A faculty is legally necessary, but not always obtained.

21. If the churchwardens erect or add new seats, they should have the consent of the parishioners, and a licence from the ordinary, although this is not required for occasional repairs (*i*).

Nor necessary for occasional repairs.

22. It is not to be maintained that every little alteration of a pew, where no private rights are infringed, requires a faculty, particularly where such alteration is for the accommodation of the parish (*j*).

Nor for trifling alterations.

23. Thus where an alteration was made with the concurrence of the churchwardens, and without any objection having been made by the parish, and the alteration was no disfigurement to the church, it was held that a faculty was not necessary (*k*). But the private assent of the bishop should always be obtained.

Nor in all cases.

24. Even for the exchange of a handsome new chalice for an old and poor one, the bishop's faculty should, in strictness, be obtained; though, practically, if the rector and vestry concur, such an authorization may be dispensed with.

But in strictness, even in small matters.

wards, given in Wilkin's *Concilia* and Spelman's *Concilia*; more particularly referred to in Book I. of this work.

(*i*) 2 *Inst.* p. 439; and in modern times, *Parham v. Templar*, 3 *Phill.* p. 527.

(*j*) *Parham v. Templar*, 3 *Phill.* p. 527.

(*k*) *Ibid.* p. 528.

CAP. I.
STRUCTURE.

Formerly
doubted where
no dispute;
even for
erection of
new pews.

So in John-
son's opinion,
but without
authority.

If with sanc-
tion of bishop
or archdeacon
faculty might
be perhaps
dispensed
with.

Clergyman
must not alter
without au-
thority.

Mode of pro-
ceeding to
obtain a
faculty for
erection seats.

25. Though, formerly, doubt has been raised whether, where there is no dispute, the sanction of the ordinary is necessary. And it has been said, that if the incumbent, churchwardens and parishioners unanimously agree that more pews are necessary, and that they be fixed in such a place, it does not seem that there is any necessity for the ordinary's interposition (*l*).

26. Johnson (*m*), especially, adds that he can see no occasion for the ordinary's concerning himself in the case; for what need is there of a judge where there is no controversy? But, perhaps, Johnson's opinion when unfortified by authority must not receive too much weight.

27. And in a recent case the court said, it was most desirable that nothing should be done (in the way of alterations) by a clergyman in his church, without in the first instance obtaining the necessary legal sanction. If the private sanction of the bishop or archdeacon had been obtained prior to the alterations being made, the court might not have been disposed to insist upon a faculty being taken out; but a clergyman had no right whatever to make alterations on his own responsibility (*n*). In this case the alteration of seats occurred in the chancel, and therefore, probably, the concurrence of the churchwardens and parishioners was not alluded to.

28. The mode of proceeding is by a Decree citing the churchwardens and inhabitants generally of the parish, to show cause why a faculty should not be granted (*o*), and with an Intimation that in default of their not appearing,

(*l*) Ayl., *Parerg.*, p. 484.

(*m*) Johnson's *Clergy. Va. Me.*, Vol. I. p. 173.

(*n*) Sieveking & E. v. Kingsford, 15 *Law T. Rep.* p. 302, and *Law J. Rep.*, 36 *N. S.* p. 3.

(*o*) Wilkinson v. Moss, 2 *Lee*, p. 259; Ayl. *Parerg.*, p. 485.

or show good and sufficient cause to the contrary, the matter will be proceeded with in their absence.

CAP. I.
STRUCTURE.

29. In the event of there being any adverse appearance, the promovent has the choice of proceeding, either by *Plea and Proof*, or by *Summary Petition*; but the latter is the more convenient form (*p*). Form of suit.

30. The court, however, is not obliged to grant a faculty in the terms of the intimation, but would grant it in terms agreeable to the law. Therefore, upon it being objected that in a Decree with Intimation, founding an application for faculty, there had been no limitation to the duration of the grant to the residence of the applicant in the parish, the court held that the objection was not good; but at the same time directed that in future the Intimation should run, to appropriate a pew to the applicant and his family while as continuing inhabitants of the parish (*q*). Bishop not bound by the terms of original prayer or intimation.

31. It is usual to exhibit a minute of vestry concurring in the objects for which the faculty is desired to be obtained; but the court, in the exercise of its right of granting or withholding faculties, holds itself unfettered by the wishes of the majority of the parishioners in vestry: it may refuse the prayer of the whole parish joined together, or may grant, if it appears necessary, a prayer on the application of one against the rest (*r*). Vestry minute usually produced; but court is unfettered.

32. But great attention will be paid to the wishes of the majority. The parishioners are, in the first instance, the best judges of the inconvenience and its remedies, and the court will not lightly presume that a majority would authorize or willingly incur an unnecessary expense (*s*). Attention is paid to wishes of parish.

(*p*) Knapp v. Nicholl, 2 Rob. Eccl. R. p. 365.

(*q*) Partington v. Rect. of Barnes, 2 Lee, p. 354.

(*r*) Groves v. Rector of Hornsey, 1 Hagg. C. R. p. 189; Evans v. Slack & Others, Law J. Rep., 38 N. S., Eccl. p. 39.

(*s*) Ibid.

CAP. I.
STRUCTURE.

Disapprobation of majority of inhabitants is not conclusive.

33. The disapprobation of even a great majority of the inhabitants is not conclusive against any proposed plan ; for although it is a fact to which the Ecclesiastical Court pays great attention, it is certainly not the only circumstance to be considered ; for the majority may incline to unnecessary expense, against which the court ought to protect the minority, or it may object to necessary expense (*t*).

Discretion of the court is free.

34. It is clear that the discretion of the court is free. The contrary doctrine would lead to monstrous consequences. As for example, supposing a church to be in a mean, shabby, and sordid condition, and yet secure from the actual inclemencies of the weather, and not in a condition in which the law would compel the parishioners to incur any expense respecting it, and some munificent person offered to put it in a decent and comely plight, but was opposed by the vestry ; the court could not be bound to refuse its consent (*t*).

Court considers whether proposed alteration is for practical benefit.

35. The principle which the court has (so far as private interests will permit it to do so) to consider in the exercise of its discretion is, whether an alteration proposed is really for the practical benefit of the church and of the parishioners.

If advantageous, and without cost to parish, should be granted.

36. Where the enlargement of the church will add to its means of accommodation, to its beauty, and to the decency of the service, and will not cost the parishioners a farthing, the court cannot conscientiously do otherwise than grant a faculty for the purpose as prayed, although the churchwardens and vestry were unanimous in opposing it (*u*).

(*t*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 189 ; *Evans v. Slack & Ors.*, *Law J. Rep.*, 38 *N. S.*, *Ecol.* p. 39.

(*u*) *Harrison v. Swayne & Swayne* (by Sir Rob. J. Phillimore), unpubl.

37. The circumstance that no part of the expenses of a proposed improvement of a church will be defrayed by the parish, but that the whole will be defrayed by the rector who petitions for a faculty for the purpose of such improvement, has a most material bearing upon the law as to the effect of the opinion and wishes of the parishioners upon the discretion of the ordinary (*v*).

**CAP. I.
STRUCTURE.**

No part of expenses charged against the parish very material.

38. It would appear that a faculty might be granted for reseating at the instance of an individual and at his expense, supposing that the sittings were dilapidated, and taking into account that the vestry are no longer able to levy a compulsory rate for their repair; and even in opposition to the wishes of the parish by the churchwardens and vestry. Such an application was made by the rector; but he failed to prove an existing inconvenience, or that (as he alleged) many parishioners were deterred thereby from attending divine service, though some sittings might be actually uncomfortable; the application was dismissed by the Consistory Court of London (*w*).

Faculty might be granted to individual offering to pay expenses; even in opposition to the parish.

39. In the event of works being already done without authority, a faculty should be obtained to confirm such works.

Works without authority may be confirmed by faculty.

40. In a case of this kind, upon a doubt being raised as to the legal constitution of the vestry at which the work was ordered, the court held that that point was unimportant if the alterations themselves were proper and such as the ordinary ought to approve (*x*).

Legality of vestry meeting is unimportant.

41. The first point to which the court looks is, whether the disapprobation of the parish, on which the objection is

Wishes of parish ascertained through the vestry.

(*v*) *Harrison v. Swayne & Swayne* (by Sir Rob. J. Phillimore), unpubl.

(*w*) *Evans v. Slack & Others*, *Law J. Rep.*, 38 *N. S.*, *Ecc.* p. 41.

(*x*) *Thomas & Hughes v. Morris*, 1 *Add.* p. 472.

**CAP. I.
STRUCTURE.**

founded, is capable of being duly ascertained by the resolution of the vestry, or by the opinions or sentiments of others, who being prevented from attending there, have joined in the proceedings in the cause (*x*).

Notice of vestry need not be special.

42. If it can be shown that due notice of vestry was given, persons who did not choose to attend are not to plead ignorance, even if the notice was *general* and for *parochial purposes* only; but still more so, if *particular*, and the vestry was called for the object in question (*y*).

Majority obtained by canvass still admissible.

43. Where a majority of parishioners is in favour of erecting a gallery, this inference as to their wishes is not impeached by saying that it was an approbation obtained by personal canvass, and that one of those who formed the majority was active in the procurement of it, since, in all public business, some one individual must take the lead (*z*).

No objection if done fairly.

44. If, indeed, he does it corruptly—if he intimidates or bribes his fellow-parishioners, that may impeach a measure which has been effected by such means; but if he obtains a majority fairly by interference, the degree of activity and zeal which might have been used for that purpose will not affect the validity of the measure (*a*).

Attendance of strangers at committee does not necessarily vitiate its acts.

45. It was made an objection on the application for a faculty to build a gallery, that the meeting of the committee was attended by others who did not belong to it. It appeared that there were nine members present, of whom five were parish officers who, by custom, as was extremely proper, were standing members of all committees. It was

(*x*) *Evans v. Slack & S., Law J. Rep.*, 38 *N. S., Eccl.* p. 39; *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.*, p. 190.

(*y*) *Ibid.* p. 191.

(*z*) *Ibid.* p. 193.

(*a*) *Ibid.* p. 193.

held that if it appeared that the other persons who attended had controlled the proceedings by a fair majority, it would have vitiated the application; but it being proved that the resolution for a gallery was unanimous, their attendance was therefore of no consequence (*b*).

CAP. I.
STRUCTURE.

46. A faculty for the erection of a gallery in a church, notwithstanding the opposition of the vicar, was granted by the Consistory Court of Gloucester. The sentence was appealed against to the Court of Arches, and the decree of the Chancellor of Gloucester confirmed (*c*).

Vicar's opposition to faculty for gallery overruled.

47. The incumbent, however, may properly object to a plan which is generally inconvenient; which diminishes the accommodation in the church; which disfigures the building; which renders it dark and incommodious. In any case of this description, it is very proper he should make a representation to the Ordinary (*d*).

But he may sometimes properly oppose such a faculty.

48. At a visitation the vicar made a presentment that new pews were wanted, and that he and the churchwardens had formed a plan for regulating the seats; but that the vestry had negatived it; that a gallery which had been used by the Sunday School had been pulled down, which he desired might be re-erected; and he concluded by stating, that if the leading parishioners who wanted seats would bring forward any plan equally commodious with that which he suggested and which would not be likely to disfigure the church, he would readily concur with them (*e*).

Vicar may present the requirement for additional seats.

49. The vestry then agreed upon a plan for erecting a new gallery, applied to the ordinary for his faculty; and the only person who opposed it was the vicar (*f*).

Vestry apply for a faculty for a gallery.

(*b*) *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 191.

(*c*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*d*) *Ibid.* p. 233.

(*e*) *Ibid.* p. 232.

(*f*) *Ibid.* p. 234.

CAP. I.
STRUCTURE.

Reasons upon
which faculty
was granted.

50. The applicants proposed the erection of a gallery, which would be no detriment or inconvenience, but, on the contrary, ornamental; and alleged that five of the principal inhabitants, in consideration of having the front seats allotted to them (which the vestry agreed to) undertook to erect the seats for themselves, while the two rows behind were to be at parish expense and for the general accommodation of the inhabitants (*g*).

In spite of
vicar.

51. Upon this representation, and in spite of various objections by the vicar, the faculty was granted by the Consistory Court of Gloucester and confirmed by the Arches Court on appeal (*g*).

Application by
rector, opposed
by parish, may
be granted.

52. On the other hand it would appear that the application by a rector to reseat the church and refit the chancel without expense to the parish, though opposed by the churchwardens acting under the authority of vestry, might under some circumstances be granted (*h*).

Convenience
and comfort,
and gain of
seats con-
sidered.

53. The rector alleged that the present seats were inconveniently arranged; that the proposed alterations were for the comfort and convenience of those persons who attended the church; and that additional seats would be provided (*h*).

Faculty re-
fused for in-
sufficient proof.

54. The churchwardens denied the two former statements and alleged that no more seats were wanted. The court considered that there was a failure of proof of the rector's statements, and there was not sufficient ground to overrule the opposition of the parish (*h*).

Fact of seats
being dilapi-
dated has
much weight.

55. If it had appeared that the present sittings were dilapidated, that fact would have had great weight, especially since there was no longer power to levy compulsory church rates, and the court would listen with greater

(*g*) *Tattersall v. Knight*, 1 *Phill.*, p. 232 et seq.

(*h*) *Evans v. Slack & S.*, *Law J. Rep.*, 38 *N. S.*, *Ecol.* p. 41.

readiness than heretofore to any proposal on the part of an individual to improve the architecture or fittings at his own expense; and the consent of the parishioners would not have the weight it formerly had (*i*).

**CAP. I.
STRUCTURE.**

56. The fact of a plan for re-pewing being approved by the bishop and patrons, the expenses being offered to be paid by subscription; and additional accommodation being afforded to the parishioners, who stood in need of it, are reasons which, ordinarily, would strongly incline the court to grant a faculty for the purpose (*k*).

If the bishop and patron assent, &c., the court would incline to assent.

57. A plan of the proposed new pews should be prepared, clearly showing the situation and size of the pews to be substituted for those already appropriated by faculty or prescription; and should be annexed to the faculty for repairing (*l*).

A plan should be annexed to the faculty.

58. But if the plan be approved by the vestry it is not necessary that it should be annexed to the process (apparently meaning, the Decree with Intimation) (*m*).

But not to petition.

59. It being clearly shown that some addition is necessary, the only question for the court is, whether the proposed method is expedient; not whether it be the *most* expedient, as the faculty can regularly be only for the plan proposed (*n*).

Court to consider what is expedient.

60. And it is no objection to it, that other and better means might have been devised for the purpose, if evidence as to those plans being better has not been regularly brought before the court (*o*).

Nor necessarily that the plan is the best devisable.

61. In all cases where any dispute may arise, the ordi-

Ordinary is sole judge of

(*i*) *Evans v. Slack & S.*, *Lam J. Rep.*, 38 *N. S.*, *Eccl.* p. 41.

(*k*) *Knapp & others v. Nicholl*, 2 *Robertson's Eccl. Rep.* p. 366.

(*l*) *Parham v. Templar*, 3 *Phill.* p. 515.

(*m*) *Tattersall v. Knight*, 1 *Phill.* p. 236.

(*n*) *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 195.

(*o*) *Ibid.*

CAP. I.
STRUCTURE.
number and
place of seats.
Reasons affect-
ing discretion
of court.

Danger to the
fabric. Where
doubtful,
weight given
to opinion of
parish.

Darkening the
pews.

Hindrance to
divine service,
or any ob-
struction.

nary is sole judge whether more pews are necessary, and where they are to be placed (*p*).

62. There are various reasons which would hinder the court, in its discretion, from granting a faculty; especially if the proposed alteration would be likely to injure the building, or impede the light, or if it would be an obstruction or disfigure the building (*q*).

63. A faculty for a gallery was opposed on the ground of danger to the fabric of the church, which was one of considerable antiquity, and apparently not of firm architecture. Two surveyors said it would be safe; but another spoke differently, with this reserve, that, without other walls, it would endanger the church. It was held, that as it did not appear that it must necessarily be so constructed, the court was not to suppose that the parish would employ improper persons to spend their money, especially when the proposed plan had been approved of, by a majority of two to one (*q*).

64. Another ground of objection to granting a faculty for a gallery in a church was, that it would darken the pews. It appeared, however, to the court, that the church was competently lighted and that it was capable of receiving additional light from the form and glazing of the windows. The surveyors having no doubt on this point, and some of the parishioners being of the same opinion, the objection was held to be immaterial (*r*).

65. And whether the seats belong to the parish in general, or to such particular persons as prescribe for them, care is to be taken that they be not built so as to be a hindrance to divine service, or to any particular person

(*p*) Rogers' *Ecccl. Law*, p. 170.

(*q*) *Groves v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 195.

(*r*) *Ibid.* p. 196.

from partaking of the benefit of it, or be in any other way an obstruction to the good order of the church (*u*).

CAP. I.
STRUCTURE.

66. Pews and seats in a church ought to be regular, and of a moderate height, that the behaviour of the parishioners may the better be observed (*x*). Seats to be a moderate height.

67. Therefore, if any seat be built so high as to hinder those that sit behind from well hearing the clergyman, or prevent the churchwardens from well observing the behaviour of those that sit in them, as they are bound to present if there be anything amiss; this is to be remedied on complaint to the ordinary, by taking the seat down to a proper height (*y*). Seat too high to be reduced.

68. Where, under certain acts of parliament, there is any union of benefices, and the bishop has by faculty altered and re-adjusted the seats in the church, leaving (as required by the Act) half, at least, unappropriated; all the seats, whether appropriated or free under any new arrangement thus effected, shall be made as near as possible of the same size and general appearance (*z*). On union of benefices and rearrangement of seats (half being free) the whole are to be alike.

69. As the Ecclesiastical Court is careful to preserve the symmetry and proportions of a church, it would be an objection to a proposed alteration, that these would be violated (*a*). Symmetry of church to be preserved.

70. If an alteration of his seat, made by any individual, disfigures the church, or the churchwardens disapprove of it, or the parish object to it, the Ecclesiastical Court will enforce the restoration of the pew (*b*). Seat raised to be reduced.

(*u*) Prid. p. 303.

(*x*) Dawtree's Case, T. T. 2 Jac. C. B.; Degge, Pt. I. cap. XII.

(*y*) Prid. p. 115; Degge, Pt. I. cap. XII.

(*z*) Union of Benefices Acts Amendment Act (33 & 34 Vict. c. 90), sect. 7.

(*a*) Groves v. Rect. of Hornsey, 1 Hagg. C. R. p. 195.

(*b*) Parham v. Templar, 3 Phill. p. 528.

CAP. I.
STRUCTURE.

Chancery can ordinarily by assent to its jurisdiction order restoration of altered church or restrain works.

71. In a recent remarkable case, the Lord Chancellor, on appeal, held that the Court of Chancery had ordinarily no power to compel the restoration of a church to its original state, nor to grant an injunction to restrain the completion of the works; but as he thought the defendant (the incumbent) had acquiesced in respect to an injunction which had been granted by the Vice-Chancellor, that injunction would not be disturbed. But the plaintiff must undertake to apply to the proper Ecclesiastical Court for authority to complete the restoration of the church to its original state; and the words "without the authority of the bishop or archdeacon" should be added to the order for the injunction (c).

Ecclesiastical Court will give an early opinion as to the law.

72. The Ecclesiastical Court is always anxious to give an early intimation of its opinion upon the law, more especially in parochial matters, in order that the parish may get into the right course, and that animosities may cease as soon as possible, since it seldom happens that the interest and excitement of a contest, are confined to the immediate litigants (d).

Country proceedings frequently irregular.

73. In the proceedings in the country courts, which are frequently very irregular, it is necessary to look to the substance of the proceedings rather than to the form of them, otherwise it would in most instances be impossible to administer justice between the parties (e). For it is the duty of the superior Ecclesiastical Courts to overlook irregularities in the country jurisdictions, and endeavour to get at the substantial merits of the case. There are, however, certain fundamental rules which it is impossible to neglect (f).

Such irregularities must be overlooked.

(c) *Cardinal v. Molyneux*, *Law Times*, 4 N. S. p. 607.

(d) *Blake v. Ushorne*, 3 *Hagg.* p. 732.

(e) *Tattersall v. Knihgt*, 1 *Phill.* p. 233.

(f) *Parham v. Templar*, 3 *Phill.* p. 522.

CAP. I.
STRUCTURE.

74. The Ecclesiastical Courts have always retained in their hands the question as to the costs of litigants, and have very much refrained from laying down any rules for guidance. Consequently the costs of opposing a faculty are in the discretion of the court, and not matter of strict law. And one great object of the court in parish contests is to quiet them as soon as may be, hoping that moderation on its part, in not condemning the objecting parties in costs, may teach them moderation in their future intercourse with their neighbours and fellow-parishioners (*g*).

Question of costs in hands of court.

Costs of opposing a faculty are not matter of strict law.

75. And where there had been a difference of opinion in the parish, though the majority were in favour of a gallery, the court did not condemn the opposers in costs, although the witnesses were all of one family, as it did not wish to seem to imply that the opposition was not on public grounds (*h*).

Difference of opinion in the parish is considered.

76. The churchwardens, however, have a claim upon the court for its support, in the expenditure of money in the way directed by the parish and finally confirmed by the court, and therefore costs may fairly be given when the opposition has been carried on after the final approbation of the parishioners, particularly if it appears to have been factious or on private grounds (*i*).

Costs of opposition on private or factious grounds may be given.

77. A vicar opposed the grant of a faculty for the erection of a gallery, and the court decided against him, but gave no costs. The vicar appealed to the Court of Arches, which confirmed the decision of the court below, and said that it hardly thought that the original contest justified so lenient a sentence as that of the court below; the vicar should have been satisfied with that decision: the

Vicar opposing and appealing vexatiously, condemned in costs.

(*g*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 197.

(*h*) *Ibid.*

(*i*) *Ibid.* p. 196.

CAP. I.
STRUCTURE.

Vicar con-
demned in
costs.

But (later)
costs are of
right and
justice.

King's Bench
granting pro-
hibition cannot
give costs in
Ecclesiastical
Court.

Church-
wardens are to
keep seats re-
paired.

Rector not
chargeable.

Founder may
prescribe to be
exempt.

appeal had some appearance of being vexatious. Looking, however, to the relation in which the parties stood to each other, and considering how desirable it was that they should return to a good understanding, the court recommended the parishioners to waive pressing the costs (*k*). They refused to accede to the suggestion and costs were eventually given against the vicar (*l*).

78. But later it was said that costs are, in the opinion of the Judicial Committee of the Privy Council, a matter of right and justice, when a party in a suit succeeds; though formerly the rule in the Ecclesiastical Courts was not strict (*m*).

79. The Act 1 Will. IV. c. 21, s. 1, does not enable the Court of King's Bench, where a party has declared in prohibition and succeeded, to grant him his costs incurred in the Ecclesiastical Court (*n*).

80. It is the duty of churchwardens to keep the seats in the body of the church, equally with the church itself in repair (*o*), at the general charge of the parishioners, unless any particular person be chargeable to do it by prescription (*p*).

81. The rector or vicar is not chargeable to the repair of the body of the church or ornaments, being at the whole charge of repairing the chancel (*q*).

82. The founder of the church may prescribe that in respect of the foundation, he and his tenants have been freed from the charge of repairing the church (*r*).

(*k*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*l*) *Ibid.* p. 238.

(*m*) *Knapp and others v. Parish of Willesden*, 2 *Roberts.* p. 369.

(*n*) *Tessimond v. Yardley*, 5 *B. & Adol.* p. 458.

(*o*) *Wood's Inst.* p. 94.

(*p*) *Degge*, pp. 163, 168.

(*q*) *Ibid.* p. 168.

(*r*) *Ibid.*

83. In like manner the inhabitants of a chapelry may prescribe that they have paid, time out of mind, a fixed sum, or repaired a part of the church; and have been freed from all other charges about the repair thereof (*s*). CAP. I.
STRUCTURE.
Or the inhabitants of a chapelry.

84. The repair of the church (and this may be said of the supply of necessities for divine worship), is a duty which the parishioners are bound by the common law of England to perform, not a voluntary act which they may decline at their discretion, for the law is absolutely imperative upon them (*t*). It is not a voluntary act of parishioners.

85. Lining and putting in cushions does not constitute repair, but is mere ornament. It is not usually done by the parish, but by each individual for his own convenience and comfort (*u*). Lining and cushions are not repair.

86. Where two parishes are united by act of parliament the repairs of the church must be done by the parishioners of both (*v*). United parishes jointly repair.

87. There seems formerly to have been doubt whether a foreigner (*i. e.*, a non-parishioner) holding lands in the parish was liable for such matters as bells, seats, and ornaments, or only for the repairs of the fabric; but Degge conceived him to be clearly liable (*x*). Former doubt of liability of non-parishioner.

88. But probably the Compulsory Church Rate Abolition Act (*y*), depriving the parishioners of power of raising money, has had the effect of putting an end to all such questions of liability. Affected by Church Rate Abolition Act.

89. Where city parishes are united under the Act of And exemption on union of benefices.

(*s*) Degge, p. 169; Hob. p. 67; 2 Rolle's *Abr.* p. 290 (*Prohib.* I. 2).

(*t*) Gosling v. Velej, 12 *Q. B.* p. 391.

(*u*) Pettman v. Bridger, 1 *Phill.* p. 331.

(*v*) Harman v. Renew, 3 *Salk.* 89; 4 & 5 Will. & Mary, c. 12; 23 & 24 Vict. c. 142.

(*x*) Degge, p. 205.

(*y*) 31 & 32 Vict. c. 109.

**CAP. I.
STRUCTURE.**

1860, the bishop may by faculty alter and readjust the seats ; and money expended and required for such purpose, and not provided by donation, is to be defrayed from funds provided by the Act (z).

Repair by parish has no effect on appropriation.

90. The fact of reparation by the churchwardens, on behalf of the parish, cannot oust the ordinary of his jurisdiction in the disposal of them (a).

Chancel seats repaired by repairer of chancel.

91. The seats in the chancel come under different considerations. The person who repairs the chancel repairs all seats there, except such as are held by prescriptive title or faculties, and of course these must be repaired by their owners.

Unless modified by special custom.

92. But whatever may be the general law and *prima facie* presumption with regard to the repairs of the chancel, still it is liable to be controlled by special custom. In London such a custom exists generally, and although that may be on peculiar grounds, the inference from the authorities upon this point is that such custom may also exist in country parishes. And such custom was held good, after being found by a jury to exist, in the parish of Clare, in the diocese of Norwich (b).

Loose seat removable by owner.

93. In Degge's opinion if a seat be set loose in a church, the owner of the seat may remove it (c).

So if built by an individual without license may be pulled down by authority.

94. In the opinion of Watson and Degge, if any person presume to build a seat in the church, without license of the ordinary, or consent of the clergyman and churchwardens, or in an inconvenient place, or too high, it may be pulled down by the proper authority (d).

When erected are not

95. But it has been decided that pews already erected

(z) 23 & 24 Vict. c. 142, s. 28.

(a) *Greaterch v. Beardsly*, 2 *Levinz*, p. 241.

(b) *Bishop of Ely v. Gibbons*, 4 *Hagg.* p. 162.

(c) *Degge*, p. 172.

(d) See *Watson's Clergy. Law*, p. 389; *Degge*, Pt. I. cap. XII.

cannot be pulled down without the consent of the minister and churchwardens, unless, after cause shown by a faculty or licence, from the ordinary (e).

CAP. I.
STRUCTURE.

removable
without
faculty.

96. And though the freehold of the church be in the parson, yet he cannot pull down any of the seats, either anciently or recently erected; but by license from the bishop, or by consent of the churchwardens (f).

Not by the
parson alone
though owning
the freehold.

97. No alterations should be made by a clergyman in his church without in the first instance obtaining the necessary legal sanction. If the private sanction of the bishop or archdeacon had been obtained prior to alterations which had been made, the court might not be disposed to insist upon a faculty being taken out; but a clergyman has no right whatever to make alterations on his own responsibility (g).

Private sanction
of bishop
or archdeacon
might suffice.

98. In an old case it was held, that supposing that the churchwardens had the power of removing seats at their pleasure, yet even then they could not cut the timber of a pew. For it has been held, that the person who built the pew has an action of *trespass* against them for breaking it, even if it has been erected without license of the ordinary, and is a hindrance to the parishioners (h).

Church-
wardens
cutting the
woodwork
liable to action
of trespass.

99. Watson says, "I shall not question the law of this case, but this much is to be said against it, that the freehold being in another person, the annexing of a seat thereto seems to make the seat to be a part of the freehold, and so to be in him in whom is the freehold, and the use of the church; and if so, then the breaking of the timber could be no wrong to him that had no legal right in it, after it

Watson's
opinion.

(e) Jarratt v. Steele, 3 *Phill.* p. 170.

(f) Degge, Pt. I. cap. XII. p. 218.

(g) Sieveking v. Evans & K., 15 *Law Times Rep.* p. 302.

(h) Gilson v. Wright, *Noy*, p. 108.

CAP. I.
STRUCTURE.

Trespass for
breaking a
seat claimed
by non-
parishioner.

Trespass is
held to lie.

Even where
the seat was
put up without
authority.

Breaking open
door and
altering pews
is a grave
offence.

was fastened to the freehold, and became as other seats, of common use, and at the disposal of the ordinary" (i).

100. In *Barrow v. Kew* (k), an action of trespass was brought for breaking a seat, wherein, as belonging to his house, the plaintiff, time out of mind, used to sit. The house was out of the parish, and upon that circumstance much discussion arose; but the propriety of the form of action does not appear to have been once questioned.

101. In the case of *Spooner v. Brewster* (l), the Court of King's Bench referring to the decision in the case of *Dawtree v. Dee*, that if the pew itself, which the party has put up, *be broken, trespass lies*, said that although that case had been somewhere doubted, it seemed consistent with law, and good sense, and it agreed with the decisions in 9 Edw. IV. c. 14, s. 8.

102. And as in *Gilson v. Wright* (m), *trespass was held to lie against the churchwardens for removing the wood work of a pew, which had been put up by the plaintiff, who was a person without any authority, à fortiori might such action be maintained, for breaking and removing the materials of one held by a prescriptive title.*

103. In a very recent case in the Arches Court (1861) where the churchwardens, against the expressed direction of the rector, and without authority from the bishop, broke open the church door, and with the assistance of workmen, altered the position of the pulpit, and pulled down and re-arranged certain of the seats in the church; the court held, most strongly, that all who had taken part in those

(i) Watson's *Clergy. Law*, p. 387.

(k) *Barrow v. Kew*, 2 *Keb.* p. 342; *Barrow v. Keen*, *Siderf.* p. 361, p. 4.

(l) *Spooner v. Brewster*, 3 *Bingh.* p. 138.

(m) *Gilson v. Wright*, *Noy*, p. 108.

proceedings had been guilty of a grave ecclesiastical offence (*n*).

CAP. I.
STRUCTURE.

104. And though the freehold of the churchyard is in the parson, trespass lies for the erection of a tombstone, against a person who wrongfully removes it from the churchyard and erases the inscription. For even the parson has no right to remove the tombstones, for the property in them remains in the persons who erected them (*o*).

And so trespass lies for removing a tombstone.

105. And Lord Coke held, that the heir may bring *trespass* against anyone who pulls down the coat armour, &c. of his ancestors, lawfully put up in the church (*p*). In the case of *Pym v. Gorwyn* (*q*), Chief Justice Coke cited the case of *Lady Gray*, who, at her husband's funeral, put up his arms and helmet in the church, and on the parson pulling them down she brought *trespass* which was held to lie.

Or for removing coat armour.

106. Though the freehold of the church be in the incumbent, and the seats be fixed to it; yet because the church is dedicated to the service of God, and is for the use of the inhabitants, and the seats are erected for their convenience in attending divine service, and such inhabitants are chargeable with the repairs of the seats. And, therefore, if any seat, though affixed to the church, be taken away by a stranger, the churchwardens, and not the parson, may have their action against the wrong-doer (*r*).

Action by churchwardens for removing seat and not by parson.

107. Aylliffe says (*s*), that if a seat is built in the body

Aylliffe's opinion contradictory.

(*n*) *Dewdney v. Good*, *Jurist*, 7 *N. S.* p. 637; and referred to as an authority by same court, *L. R.*, 3 *Ad. & Ec.* p. 124.

(*o*) *Spooner v. Brewster*, 3 *Bingh.* p. 138.

(*p*) *Mich.* 14 *Jac.* 1, *Brownl. & Gouldsb.* p. 45.

(*q*) *Pym v. Gorwyn*, *Moor*, p. 878.

(*r*) *Watson*, pp. 382, 387; citing *Year Book*, 8 *Hen. VII.* p. 12.

(*s*) *Aylliffe's Parerg.* p. 486.

CAP. I.
STRUCTURE.

Not removable by chapel-wardens without perpetual curate.

Lay impropriator removing seats in chancel ordered to restore them.

of the church without the bishop's consent, the church-wardens may pull it down; but he also says, that the freehold of the church being in the parson, when any person has fixed a seat in it, the seat then becomes parcel of the freehold, and consequently the right is in the parson. The two statements appear contradictory.

108. A chapelwarden of a parochial chapelry has not, by virtue of his office, any authority to enter the chapel and remove the pews without the consent of the perpetual curate (*t*).

109. The lay impropriator of the chancel forcibly broke into a church and pulled down certain pews in the chancel, and erected others in their place. A criminal suit against him was instituted by the vicar. At the hearing before the Exchequer Court the impropriator was admonished to pull down the seats he had erected, to replace those he had pulled down, and to reinstate the chancel as it was; a time was also fixed by the court for him to certify that he had complied with the sentence (*u*), and he was condemned in costs.

110. The remedy is by a suit in the Ecclesiastical Court, and in ordinary cases commences with a citation to show cause why a monition for the restoration of the seats to their original condition should not issue; but where the acts had been done by the incumbent the Consistory Court of London refused a motion for such a monition, and directed that proceedings should be taken under the Church Discipline Act (*x*), as for a criminal act. The case went to the Arches Court on appeal, when the judge, deciding the case on its merits, declined

(*t*) *Jones v. Ellis*, 2 *Y. & J.* p. 265.

(*u*) *Jarratt v. Steele*, 3 *Phill.* p. 170.

(*x*) 3 & 4 *Vict.* c. 86,

to give an opinion whether such form of proceeding was or was not right (*y*).

CAP. I.
STRUCTURE.

111. Upon the suggestion of the court, and on consent of both sides, in order to save expense, the archdeacon, as a matter of favour to the court, visited the church, and made a report as to what alterations should, in his opinion, remain, and what things should be restored. The court gave sentence in accordance with the report, except in one particular (*z*).

112. The freehold of the church being in the parson, and in none other (*a*), he only, in the first instance, has the right to the possession of the key of the church (*b*), and the churchwardens have not, as against the incumbent of a church or chapel, a joint possession of it, so as to disable him from maintaining *trespass* against them for acts of violence, such as breaking and entering a chapel, and pulling down a pew in the body of it (*c*).

Parson only
has right to
key of church.

113. And even a perpetual curate of an augmented parochial chapelry has a sufficient possession whereon to maintain *trespass* against the churchwardens for breaking and entering the chapel and destroying the pews (*c*).

Perpetual
curate has
action of *tres-
pass* against
wardens for
destroying
pews.

114. But if a curate act contrary to the churchwardens in the removal of a pew, the curate may be proceeded against by the churchwardens; for the curate has no authority to alter the seats (*d*).

Curate re-
moving a pew
liable to action
by wardens.

115. But in respect to articles not affixed to the church it is different; thus, if a man take the organ out of a church the churchwardens have an action of *trespass*

Otherwise as to
an organ.

(*y*) *Sieveking & E. v. Kingsford*, *Law Journal Rep.*, 36 *N. S.* p. 4.

(*z*) *Ibid.* p. 3.

(*a*) *Frances v. Ley*, *Cro. 2 Jac.* p. 367.

(*b*) *Lee v. Matthews*, 3 *Hagg.* p. 173.

(*c*) *Jones v. Ellis and others*, 2 *Y. & J.* p. 265.

(*d*) *Parham v. Templar*, 3 *Phill.* p. 526.

CAP. I.
STRUCTURE.

Remedy for
pulling down
privately-
erected seats.

against him ; because the organ belongs to the parishioners, and not to the parson, and the parson cannot sue the taker in the Ecclesiastical Court (*f*).

116. If, however, a man, with the assent of the ordinary, doth set up a seat in *navi ecclesiæ* for himself, and another doth pull down or deface it, trespass *vi et armis* doth not lie against him, because the freehold is in the parson, and so the only remedy is in the Ecclesiastical Court (*g*).

Materials of
parish seats
belong to the
parish.

117. Seats legally put, and at the expense of the parishioners, although they be affixed to the parson's freehold, yet the materials do not, therefore, become his when taken down again, but belong to the parishioners ; for they, having a right to put them there, because of the common use which they have of that part of the church, have also a right to take them away again ; and the materials may be disposed of by the churchwardens in the same manner as the materials of the roof of the church, or any other part which they are bound to maintain (*h*).

Materials of
seats illegally
put up belong
to the parson.

118. If, on the other hand, any man presume to build any seat in church without legal authority, it may be pulled down by order of the bishop, or his archdeacon, and the materials belong to the parson (*i*), as they have been fixed to his freehold. The churchwardens cannot claim them for the parish, because they did *not put them up there* ; and the private person who built the seat having had *no right to put them there*, he can have no right, after having fixed them to the freehold, again to take them away (*k*).

(*f*) Rolle's *Abr.* p. 393.

(*g*) Watson, p. 386.

(*h*) Prid. p. 303 ; Degge, Pt. I. cap. XII. (5th ed. p. 172.)

(*i*) Degge, p. 172.

(*k*) Prid. p. 304.

119. Therefore, neither he nor the churchwardens can have anything to plead in bar of that right, which the minister has acquired to them, by having had them fixed to his freehold. For if a man wrongfully plant a tree in another man's soil by putting it there he makes it part of the freehold, and therefore whenever it is again removed it belongs to him who owns the land (*l*).

CAP. I.
STRUCTURE.

In right of his
freehold.

120. The door of a pew hung upon hinges, removable without interfering with the staple, is a chattel, and not part of the freehold (*m*).

A pew door is
a chattel.

121. But the lock and key to the door of the church must be taken as part of the building, just as in an ordinary house (*n*).

Church lock
and key are
part of the
building.

122. Other considerations affect the materials of demolished pews held under faculty or prescription (*o*).

(*l*) Prid. p. 304.

(*m*) Mant *v.* Collins, 10 *Jur.* p. 30; 15 *L. J., Q. B.* p. 248.

(*n*) Chapman *v.* Jones, *L. R.*, 4 *Ex.* p. 282.

(*o*) See *post*.

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION a.

ORDINARY SEATS.

CHAPTER II.

CAP. II. USE.

USE.

Use of seats.

123. WE now come to the consideration of the use of the seats when put up, but, as heretofore, reserving to a subsequent chapter all matters connected with seats held, or claimed to be held, by virtue of faculty or prescription.

Nor allotted before the Reformation.

124. It was said by the learned antiquary Bishop White Kennett, that “Before the Age of our Reformation no Seats were allow’d nor any different apartment in a Church assign’d to distinct Inhabitants but the whole Nave or Body of the Church was common, and the whole Assembly, in the more becoming postures of kneeling or standing, were promiscuous and intermixt” (a).

Wills of incumbents bequeathing the seats.

125. He is followed by Johnson who says (and Burns after him), that “many wills of incumbents are to be seen whereby they did of old bequeath the seats in the church to their successors or others as they thought fit” (b). Athon and Lindwood are silent in the case. The common law books mention but two or three cases before this time and those relating to the chancels and seats of persons of great quality.

Fixed seats were introduced at earlier date.

126. Subsequent studies of archæologists, however, leave no doubt that the introduction of fixed seats took place at a period clearly antecedent to the Reformation, though it

(a) Kennett’s *Antiq. of Ambrosden*, p. 596.

(b) Johnson, Vol. I. p. 178.

is highly probable that their use was by no means universal even at that date. The statement of Johnson as to the moveable seats being frequently the property of and bequeathed by the incumbents remains uncorroborated.

CAP. II.
USE.

127. In a case in the third year of Queen Anne (1706) the reporter adds:—"Likewise it was said that anciently there were no pews in churches but only forms" (*c*). Forms were earlier.

128. The rare references which occur as to the use of church seats at an earlier period probably relate to chancel seats (*d*), or moveable seats, as is more particularly apparent from the other part of this work (*e*). Early mention usually refers to chancel.

129. By the general law the soil and freehold of the church and churchyard belong to the parson. For this reason the parson alone can give a licence for burying in the church (*f*). We must see how far this general right of the parishioners is affected by the freehold right of the parson, such as it is. Freehold of the church is in the parson.

130. Sir John Nicholl does not appear to have had a high idea of the parson's freehold, for he says, "The freehold of the chancel may be in the rector, lay or spiritual, as the freehold of the church is, by a sort of legal fiction, in the incumbent" (*g*). By a sort of legal fiction.

131. It is said, that though the freehold of the church is in the incumbent, yet the use of the church to hear divine service is in the parishioners (*h*), who have, by the general law and of common right, a common property in the pews of the church. These pews are for the use in Use of church is in the parishioners in common.

(*c*) 6 Mod. p. 231.

(*d*) As in Wyche's case, the chancel only is referred to. *Year Book*, 9 Edw. IV., Ed. 1597, p. 14.

(*e*) Also Johns. p. 175; Kennett, p. 596; Burn's *Eccl. Law*, p. 358, citing the above.

(*f*) *Francis v. Law*, 2 *Cro.* p. 367; *Day v. Beddingfield and others*, *Noy*, p. 104; 2 *Roll.* p. 337, c. 10.

(*g*) *Rich v. Bushnell*, 4 *Hagg.* p. 170.

(*h*) 12 *Coke's Rep.* p. 105.

CAP. II.
USE.

common of the parishioners, who are *all* entitled to be seated, orderly and conveniently, so as best to provide for the accommodation of *all* (*i*).

All are entitled to seats.

132. Every parishioner has a right to be seated, but not to a pew (*k*).

For convenience at divine service.

133. The seats are for the use of the parishioners to sit, kneel, and stand in, for the hearing of the word of God read and preached, and joining in the prayers and other religious duties with the other parishioners (*l*).

And for their general accommodation.

134. The object to be attained is the general accommodation of *all* the parishioners (*m*).

135. And this distinction was distinctly held in view by the framers of the original Church Building Acts, for although allotments and rents are legalized, it is only till such time as a sufficient endowment can be obtained and no longer.

At first no seat permitted in the body of the church.

136. Thus it was held, in the earliest known case bearing upon the subject of church seats, that, unless by prescription, a seat in the body of the church could not be permitted, for the church is common for everyone, wherefore it is not in reason that one should have a seat and that two should stand; for no place is more for one than for another, and that a private seat was a common nuisance to all, because it hindered their right of standing in the church (*n*).

Practice of arrangement by bishop has since arisen for maintenance of order.

137. Though thus void of all ancient foundation, a system, based upon the reasonable claim and duty of the bishop, as ordinary, to preserve order has gradually grown up, by

(*i*) *Fuller v. Lane*, 2 *Add.* p. 425; *Butt v. Jones*, 2 *Hagg.* p. 424; *Ayl. Par.* p. 484.

(*k*) *Londonderry Cath.*, *L. J.*, 8 *N. S.* p. 861.

(*l*) *Degge*, p. 210; *Watson*, p. 382.

(*m*) *Report of Comrs.* 1832, 12mo. ed. p. 48; *Fuller v. Lane*, 2 *Add.* p. 425.

(*n*) *Year Book*, 8 Henry VII. p. 12.

which he proceeds to arrange the church in such manner as the service of God may best be celebrated and that there be no contention in the church (*o*). And therefore the authority of the ordinary (that is, of the bishop or person acting for him [*p*]), extends *primâ facie* over all pews.

CAP. II.
USE.

Ordinary's authority.

138. Also, perhaps, as having the general cure of souls within his diocese (*q*).

And as having cure throughout diocese.

139. Therefore, if a question arises concerning a seat in the body of the church, the ordinary shall decide it (*r*), because the freehold is in the parson, and the place is dedicated and consecrated to the service of God.

Disputes to be decided by him.

140. And all controversies concerning seats in a church are determinable before the ordinary, except where a person claims a seat by prescription (*s*).

Unless claim be by prescription.

141. In Brabin's case the bishop had displaced him and given seat to Trediman by faculty. He applied for prohibition which was granted, 1st, because an alleged custom that twelve parishioners allotted seats was a reasonable custom (*t*); and 2nd, that the faculty was to Trediman and his heirs, and not limited to residence in parish. Justice Houghton said that if there had not been an immemorial custom for the churchwardens to repair and make new seats no prohibition could have been granted "for ancient custom *ne poet vaer*" as to new seats (*u*).

Rolle's report of Brabin's case. (Doubtful in part.)

(*o*) 12 Coke's *Rep.* p. 105.

(*p*) Co. *Litt.* 96 a.

(*q*) Ayl. *Par.* p. 484.

(*r*) Corven's case, 12 Coke's *Rep.* p. 105.

(*s*) Anon. p. 12; *Mod.* p. 401; *Eaton v. Ayliffe, Hetley*, p. 95; *Hobart*, p. 69.

(*t*) Another report of the same case says that the prohibition was granted on other grounds; 1st, because the grant to a man and his heirs was bad; and 2nd, because excommunication was too great a punishment for an interference with the bishop's nominee (Popham, p. 140).

(*u*) 2 Rolle's *Rep.* p. 24.

CAP. II.
USE.

Common law
not to meddle
in church
seats;

but only the
Ecclesiastical
Courts, if no
contrary
custom.

Nor can
Chancery con-
trol the Eccle-
siastical
Courts.

On union of
benefices half
seats as re-
adjusted can be
allotted.

Bishop's juris-
diction extends
to chapels of
ease.

142. Ayliffe says that in a case respecting a seat in the body of the church, prohibition was refused, "For (said Houghton, referring to the case in the Year Book, 8 Hen. VII., 12), this disposition of pews in the church belongs to the order and discretion of the ordinary." And the rest of the judges did all of them say that they would not meddle with the deciding of such controversies about seats in the church, but would leave the same to whom it did more properly belong. And thus the Ecclesiastical Court has jurisdiction and power to dispose of pews and seats in the body of the church, notwithstanding the church is the parson's freehold; if there be no custom to the contrary (*v*).

143. And in a recent case Lord Chancellor Westbury intimated that his court could make no order as to works to be done in the church; but said that the plaintiff must apply to the proper Ecclesiastical Court for authority to restore the church to its original state, and that a former order of the Vice-Chancellor must be modified, by adding a requirement that the authority of the bishop or arch-deacon should be obtained before any works in the church were effected (*x*).

144. Where, under certain acts of parliament, there is any union of benefices, and the bishop has by faculty altered and re-adjusted the seats and the appropriation thereof in the church of the benefice, at least one-half of the sittings shall be left unappropriated (*y*). The power of allotment by the bishop is thus limited to the other half of the seats.

145. And in like manner as the disposal of seats in the mother church belongs to the ordinary, he has authority

(*v*) Ayliffe's *Par.* p. 485.

(*x*) *Cardinall v. Molyneux*, *L. T.*, 4 *N. S.* p. 607.

(*y*) Union of Benefices Acts Amendment Act (34 & 35 Vict. c. 90), sect. 7.

as to seats in a chapel of ease belonging to the mother church (*z*).

CAP. II.
USE.

146. But an Ecclesiastical Court cannot entertain a suit as to the allotment of seats in a place of divine worship unless such place is a legally-consecrated building (*a*).

But not in an unconsecrated building.

147. In a suit for perturbation of seat, objection was taken to the jurisdiction of the Ecclesiastical Court on the ground that the church had been pulled down and rebuilt, and that on such rebuilding there had been no consecration. The Privy Council in deciding the case (upon other grounds) gave no judicial decision whether, if a church be rebuilt upon the old lines of foundation, including within it the same originally consecrated ground and no more, such church does need re-consecration; and wished it to be distinctly understood that the court by no means intended to recognize or sanction such doctrine (*b*).

Church rebuilt in sections, but no further consecration, does not stop Ecclesiastical Court.

148. No action at common law can be maintained for a disturbance of a pew which is not annexed to any house, if it be in the body of the church. But it has been suggested that a chancel is different, as it may be the freehold of an individual (*c*).

No action lies for disturbance except under prescriptive right.

149. And the mere right to sit in a particular pew is not such a temporal right as that, in respect of it, an action at common law is maintainable (*d*). And the disturbance is matter for ecclesiastical censure only (*e*).

Matter for ecclesiastical censure.

150. The existing rules, upon which such controversies are now decided, have simply grown up. The general law, with respect to pews and sittings in churches, was,

The law was little understood.

(*z*) *Lee v. Daniel*, 12 *Mod.* p. 228.

(*a*) *Battiscombe v. Eve*, *Jur.*, 9 *N. S.* p. 210; *L. J.*, 7 *N. S.* p. 697.

(*b*) *Parker v. Leach*, 4 *Moore's P. C. Rep.*, *N. S.* p. 193.

(*c*) *Mainwaring v. Giles*, 5 *B. & A.* p. 361.

(*d*) *Ibid.* p. 362.

(*e*) *Ibid.* p. 361.

CAP. II.
USE.

Law still in unsatisfactory state.

As to seats in chancel, especially doubtful.

Term *chancel* here not applied to a side chancel or chapel.

Church in act of parliament includes chancel.

Appropriation of chancel seats claimed by rector.

for a long time, little understood; and erroneous notions on this subject are even now current, at least in many parts of the country, and have led to much practical inconvenience (*f*). And, indeed, the law on this subject is in some respects still in an unsatisfactory state.

151. Considerable doubt existed as to the appropriation of seats in the chancel, other than those used by persons engaged or assisting in the performance of divine service; in fact such other seats in the chancel are a comparatively recent introduction.

152. It may be well here, in order to avoid possible mistakes, to refer to the fact that the term *chancel* was formerly not unfrequently used with a want of technicality; when “a chancel” is spoken of it often refers to a chapel or aisle on one side of the actual chancel, and consequently is subject to totally different considerations.

153. So, although, in strictness, the word “church” in ecclesiastical language is generally understood to mean the body of the church, yet where it occurred in a modern act of parliament (*g*), the Arches Court held that the word was used by the legislature in its usual and common sense of including the chancel and the whole building, and that manifest inconvenience would result from any other construction (*h*).

154. The right of appropriation of seats in the chancel was at first claimed by the rector on the ground that he repaired, and was compellable to repair, that part of the church. It is distinctly laid down that the charge of repairing the chancel is upon the rector, whether he be appropriator, impropriator, or instituted rector of the

(*f*) *Fuller v. Lane*, 2 *Add.* p. 425.

(*g*) 5 Geo. IV. c. 36.

(*h*) *Rippin & W. v. Bastin*, *L. Journal Rep.*, 38 *N. S.*, *Eccles.* p. 37.

parish (i). In some churches, however, the vicar is by special composition bound to repair, and then he is said to have the freehold of the chancel, as well as of the body of the church and churchyard (k). The person, therefore, who repairs the chancel repairs all the seats there, except such (if any) as are held by faculty or prescription, which must, of course, be repaired by their owners.

CAP. II.
USE.

Repairs of
chancel.
Repairs of
seats there.

155. In an early case it was distinctly laid down that the seats in the chancel are properly in the disposal of the rector or parson; but that it would seem that a parishioner may prescribe for a seat there (l).

Seats in
chancel may
be prescribed
for.

156. On this ground of repair Prideaux considers that if the ordinary do not, in exercise of his right, interfere in the disposal of seats in the chancel, the parson may dispose of them in the same manner as the churchwardens do those in the body of the church; but if any controversy arise, there is an appeal to the bishop from the one as from the other (m). But quære? who is to appeal to the bishop; it is not suggested that anyone has a right to a seat in the chancel unless by prescription, or (possibly) by faculty; and it is declared that the use of the chancel is for the performance of divine service.

Prideaux
thinks rector's
right inde-
pendent of
the bishop.

But quære?

157. And on the same ground Ayliffe, holding a stronger opinion, says that the ordinary has no right to place anyone there, and that the rector shall have the chancel to himself in a peculiar manner. He does not, however, suggest that the rector has any right to dispose of the seats there (n).

Perhaps Ay-
liffe, also.

158. The exception is in the City of London, where

London claims
to be an ex-

(i) *Veley v. Burder*, 12 A. & E. p. 302.

(k) *Prid.* p. 330.

(l) *Hall v. Ellis*, *Noy*, p. 133.

(m) *Tyrrwhitt's Prid.* p. 119.

(n) *Ayliffe's Parerg.* p. 486.

CAP. II.
USE.ception to
general rule.

by custom the parish is bound to repair the chancel; the churchwardens, probably in consequence of this, claim the right of independent appropriation (*o*). But no such question seems ever to have been tried. No usage can give them a title to do this exclusive of the bishop. For when any controversy arises, they have nowhere else to go but to the bishop for a decision of it (*p*), and the claim is treated as non-existent in certain modern acts of parliament (*q*).

But Gibson
opposed to
Ayliffe;and Queen's
Bench later.Rector has
chief pew in
chancel, and
ordinary ap-
points others.Vicar's per-
sonal claim.But much
doubt still
entertained.

159. Bishop Gibson's opinion is directly contrary to that of Ayliffe. He says that the seats in the chancel are under the disposition of the ordinary in like manner as those in the body of the church (*r*). And more recently there are dicta in the Queen's Bench to the same effect (*s*).

160. More modern decisions, however, lay down that the general rule is said to be that the rector is entitled to the principal pew in the chancel, but that the ordinary may grant permission to other persons to have pews there (*t*).

161. Johnson says that in some places, where the parson repairs the chancel, the vicar, by prescription, claims the right of a seat for his family, and also of giving leave to bury there, taking a fee upon the burial of any corpse (*u*).

162. The Commission on the Ecclesiastical Courts, however, reported that the law has not been settled with certainty, and great inconvenience has been experienced from the doubts continued to be entertained. That some are of

(*o*) Tyrr. *Prid.* p. 119.

(*p*) *Prid.* p. 302.

(*q*) 18 & 19 Vict. c. 127; 23 & 24 Vict. c. 142.

(*r*) Gibson's *Co.* p. 224.

(*s*) *Clifford v. Wicks*, 1 B. & A. p. 498; *Morgan v. Curtis*, 3 M. & Ry. p. 389.

(*t*) *Clifford v. Wicks*, 1 B. & A. p. 506.

(*u*) 1 Johnson's *Cl. Va. me.*, p. 269, followed in 1 Burn's *Ecccl. Law*, p. 363.

opinion that the churchwardens have no authority over pews in the chancel; while it has been said that the rector, whether spiritual or lay, has in the first instance, at least, a right to dispose of the seats; claims have also been set up on behalf of the vicar, and the extent of the ordinary's authority to remedy any undue arrangement, with regard to such pews, has been questioned (*x*).

CAP. II.
USE.

Vicar's claim
doubted.

163. It does not appear upon what ground this part of the church intended for a special purpose should be appropriated to the general seating of the parishioners, and thus be converted to the same purpose as the body of the church.

Grounds for
any appropriation
in chancel
not apparent.

164. Nor does it appear why the rector's family, who can have no ecclesiastical functions to perform, should have a preference over the rest of the parishioners. But, as matters stand, such is held to be the case, and all the other seats in the chancel are now generally supposed to be in all respects subject to the appropriation by the churchwardens under the bishop and under the same conditions as the seats in the body of the church.

Nor for prefer-
ence of rector's
family.

165. The earliest record of any systematic arrangement of seats by the ordinary's authority, appears at the beginning of the seventeenth century, when in a few instances the bishop granted a faculty for the purpose; showing that it could be only done by the exercise of an (actual, assumed, or arrogated) authority formally granted in very few individual cases. No general rule as to the disposition of the seats amongst the parishioners in order of rank appears to have been laid down until the year 1825, when, in the course of his judgment in the case of *Fuller v. Lane*, Sir John Nicholl, then Dean of the Arches, said (*y*):—

Commence-
ment of syste-
matic arrange-
ment.

“The parishioners have a claim to be seated according

Preference to
rank and

(*x*) *Rep. of Com. on Ecol. Cts.* p. 130.

(*y*) *Fuller v. Lane*, 2 *Add.* p. 426.

CAP. II.
USE.

station, first
ruled in 1825.

to their rank and station; but the churchwardens are not, in providing for this, to overlook the claims of all the parishioners to be seated, if sittings can be afforded them. Accordingly they are bound in particular not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation with the rest, though they are not entitled to equal accommodation, supposing the seats to be not all equally convenient."

No authority
given.

166. The question, however, before the court for decision did not relate to the general arrangement of the parishioners, but was a contest with respect to the application of an individual for a faculty to secure to him and his family a particular pew. The observations of the judge, above quoted, do not therefore carry the weight of a judgment. It will be noted that the judge referred to no authority for his opinion, and a careful search has failed to discover any. If no authority be found, it would seem that the matter is thrown back to the ancient decisions that the church is common for every one(z). Such an arrangement as was contemplated by the judge in 1825 was perhaps not unsuited to the ideas of the time; but now, and especially where there is a rapidly-increasing population, very different considerations operate.

Reasons for
doubt of ordi-
nary's power.

If existing
must be exer-
cised with
discretion.

167. It may be doubted whether the ordinary has the power to deprive the parishioners at large of their equal rights in the church by allotting a fixed part to certain individuals or families to the exclusion, so far, of all the rest of the parishioners. And supposing that the claim to such power be maintainable, there seems no reason to doubt that the exercise of it must depend upon the discretion of the ordinary; the churchwardens are bound to

(z) *Year Book*, 8 Henry VII. p. 12.

exercise their authority with discretion (*a*), and the same rule would apply to the bishop; and it has never been suggested that he is bound in its exercise to favour an applicant in preference to the parishioners generally.

CAP. II.
USE.

168. But, since the case of *Fuller v. Lane* (*b*), ordinaries have been accustomed to assume, as an established rule of law, that it is their duty to allot seats to parishioners according to the rank and station of the applicants; but the remarks of the judge, in that case, even if they had had the force of a judgment, can scarcely be taken to favour an allotment to some parishioners to the entire exclusion of others.

Present practice of doubtful force.

169. The authority actually exercised by the ordinary in the use of the seats is performed by means of the churchwardens, as a matter of convenience, and they place the parishioners in the different pews (*c*).

Bishop's authority usually exercised through the churchwardens.

170. As the churchwardens have the care of the church and of all the seats therein, they must see that good order be preserved, and no disturbance or contention be made about them in the house of God; but (*Prideaux* adds) that every man regularly take that seat and that place in it to which he has a right, whether it be by prescription, by order of the bishop, or by their own permission (*d*).

Duty of wardens to keep good order in use of the seats.

171. *Watson*, on the other hand, shows the inconvenience which might arise from the plan of allotment. If merely the best and upper seats be appropriated, persons of greater quality could then only be seated in inferior and remote parts of the church, the best seats by such means being taken up, it may be by only inferior tenants

Inconvenience of appropriating best seats only.

(*a*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 33.

(*b*) *Fuller v. Lane*, 2 *Add.* p. 426.

(*c*) *Drury v. Harrison*, cited in *Parham v. Templar*, 3 *Phill.* p. 516; *Morgan v. Curtis*, 3 *M. & Ry.* p. 349; *Wood's Inst.* p. 94.

(*d*) *Tyrr. Prid.* p. 103. No authority is given for this statement.

CAP. II.
USE.

or servants living in the houses, to which the pews are said to belong (*f*).

Wardens should prevent improper occupancy.

172. The churchwardens should take good care to prevent improper occupancy, and if they do not attend to this they are guilty of a breach of their duty (*g*).

Limitation of authority where all seats moveable.

173. The doctrine that the general disposal of the seats appertains to the churchwardens, perhaps, must receive some limitation where the seats are all moveable or where chairs alone are in use (*h*).

Wardens act only as officers of the bishop.

174. The common law never meddles with these matters, except where a seat is claimed by prescription. All other seats it wholly leaves to the disposing and ordering of the bishop; and so long as he has the decision of all controversies about them, this will always be a proof of his right in the matter. Therefore, whatsoever usage the churchwardens may pretend to for the disposal of the seats in any church, they must be understood to do this solely by the authority of the bishop, as officers acting under him (*i*).

Doubt if they can have the right independent of the bishop.

175. It seems doubtful whether the churchwardens have, under *any* circumstances, a right to dispose of seats independent of the ordinary. Dr. Prideaux held that how much soever it may have been the usage in any place for the churchwardens to dispose of the seats in the church, it can never amount to a prescription to exclude the bishop; because, they being officers under him, whatever they do in this kind, must always be supposed to be done by an authority derived from him, either positively granted, as by his faculty, or else tacitly allowed (*k*).

(*f*) Watson, p. 392.

(*g*) *Walter v. Gunner & Drury*, 1 *Hagg. C. R.* p. 317.

(*h*) *Ritchings v. Cordingley*, *L. R.*, 3 *Adm. & Ec.* p. 119.

(*i*) *Prid.* p. 307; *Degge*, p. 213.

(*k*) *Prid.* p. 302.

176. In a suit in the Consistory Court of London in 1598, brought by the wives of two parishioners against churchwardens, the latter, in the name of themselves and the parishioners, challenged that to themselves the right belonged of placing and displacing of pews. Dr. Stanhope, the Judge, said:—"I thinck itt fitt, when there is occasion, that the Ordinarie be alwaies therein consulted, for continuance of his Jurisdiction, and for redressing of any whoe shall find them selves agreed" (1).

CAP. II.
USE.

Should consult
the ordinary

177. In Rolle's Report of the case of *Brabin v. Trediman*, it is stated that a prohibition, even after an appeal to the High Court of Delegates, was granted for two reasons:—

Whether
wardens can
prescribe to
allot the
seats inde-
pendent of the
bishop.

In favour.

1. Custom for the two churchwardens, with assent of twelve parishioners, to appoint for the appropriation of seats was reasonable.
2. That the grant by the bishop to his nominee was to him and his heirs, and not so long as he inhabits the parish (m).

178. It is stated in Gibson's Codex, on the authority of this case in Rolle's Reports, that a custom, time out of mind, of disposing seats by the churchwardens and major part of the parish, or by twelve or any particular number of the parishioners, is a good custom; and that if the ordinary interpose, a prohibition will be granted (n). He also refers to the case of *Colebach & others v. Baldwyn*, but that only goes to the extent that such a custom might be good, but not that it is good. And Watson cites this case as authority for his statement that the

Custom held
by Gibson to
be good.

Cited by Wat-
son.

(1) London, *Vicar-General's Books*, Vol. VIII. fol. lxi.

(m) *Brabin v. Trediman*, 2 *Rolle's Rep.* p. 24.

(n) *Gibson's Co.*, p. 222; *Colebach & others v. Baldwyn*, 2 *Lutwyche*, p. 1032.

CAP. II.
USE.

Grounds of prohibition as stated in another report.

churchwardens may have the disposal of the seats independent of the ordinary (*o*); and Burn cites Watson (*p*).

179. The report of the same case by another reporter states the ground upon which the prohibition was granted very differently:—"Prohibition granted because the grant to man and heirs is not good, and because excommunication was too great a punishment for those who interfered with bishop's appointee." (*q*). It seems probable that of the grounds for prohibition as stated in these two reports, the latter is correct as being in accordance with other decisions.

Contrary decision: parishioners cannot oust ordinary.

180. But the opinion that the churchwardens have no independent authority rests on much firmer ground. In a case where the churchwardens prayed a prohibition of the Bishop's Court in the disposal of seats,—alleging that as they repaired they had a prescriptive right to deal with them,—the court refused the prohibition, saying that: "Of common right the ordinary hath the disposal of all seats in the church, and of common right the parishioners ought to repair them. Then what have the parishioners done here to oust the ordinary of his jurisdiction? They have only said that they have repaired the seats at the parish charge, for which they have the easement of sitting in them, according to the disposal of the ordinary" (*r*).

Nor jostle out his authority.

181. But where a prohibition was prayed, on a suggestion that time out of mind there had been a custom that the churchwardens, with the major part of the parishioners, may order the seats in the church, Chief Justice North said:—"A prohibition shall not be granted

(*o*) Watson, p. 389.

(*p*) Burn's *Ecc. Law*, 9th ed., p. 359 a.

(*q*) Brabin v. Tradum, *Popham*, p. 140.

(*r*) Greaterch v. Beardsly, 2 *Levinz*, p. 241.

because the ordinary hath jurisdiction, and the churchwardens cannot jostle out his authority" (*s*).

CAP. II.
USE.

182. And this appears to have been had in view in the act of parliament passed in 1860 to facilitate the union of parishes in cities, towns, and boroughs (*t*). Under certain circumstances (after reserving sufficient for all the parishioners attending service), seats in the church might be provided for non-parishioners. Over these the churchwardens alone have control, since non-parishioners can have (unless by prescription) no rights in the church, and therefore cannot be entitled to appeal to the bishop; whereas it is expressly provided that the parishioners' seats are to be disposed of by the churchwardens under the bishop.

Appears in act
of parliament
in 1860.

183. Watson, referring to Pym and Gorwyn's case (*u*), says, that though it is said to have been held that seats in the body of the church are disposable by the parson and churchwardens, this must be understood of the usual cases, where there is no dispute about the matter, and the ordinary does not interfere because none complain (*w*). But according to other reporters of the same case, it was held that the ordinary had primarily the disposal (*x*),

Ordinary may
have had no
reason to
interfere.

184. And it has been held that parishioners cannot prescribe to dispose of pews exclusive of the ordinary, because the ordinary not acting, might be because there had been no occasion for his intermeddling; but that cannot vest the right in them who are only a corporation capable of goods, but not of inheritance (*y*).

Wardens are
not capable of
inheritance.

(*s*) *Langley v. Chute*, *Sir Tho. Raym.* p. 246.

(*t*) 23 & 24 Vict. c. 142, s. 27.

(*u*) *Pym v. Gorwyn*, *Moor*, p. 878.

(*w*) *Watson's Cl. Law*, p. 388.

(*x*) *Corven's case*, 12 *Coke*, p. 105; *Garven and Pym's case*, *Godb.* p. 200. These and *Pym v. Gorwyn*, reported by *Moor*, p. 878, are one case, but the names spelt differently by the different reporters.

(*y*) *Presgrave v. Churchw. of Shrewsbury*, 1 *Salk.* p. 166. Such prescriptive right void, *Com. Dig.* "Esglise" (G. 3).

CAP. II.
USE.

If all are satisfied bishop need not interfere.

Parson has no authority.

Neither clergy nor vestry have any right to interfere.

But formerly often done where church was rebuilt.

Right of parishioners to use of church.

185. As to the mere arrangements of seats, if the parishioners can settle that amongst themselves, and to their own satisfaction, and can agree about the expense, there seems but little necessity for the interference of the incumbent, the expense being that of the parishioners (*z*).

186. It was formerly held that the parson acted jointly with the churchwardens (*a*); but it has more recently been held that the incumbent has no authority in the seating and arranging the parishioners, beyond that of an individual member of the vestry, and that which his station and influence in the parish naturally give him (*b*).

187. And also that neither the clergyman nor the vestry have any right whatever to interfere with the churchwardens in seating and arranging the parishioners, as is often erroneously supposed. But at the same time the advice of the clergyman, and even sometimes the opinions and wishes of the vestry, may be fitly invoked by the churchwardens, and to a certain extent ought to have weight, or may reasonably be deferred to in this matter (*c*).

188. On rebuilding a church it used to be very common to leave the adjustment of the pews to the rector and churchwardens (*d*).

189. By the laws of King Canute, A.D. 1018, all people ought of right to assist in maintaining the church (*e*). Possibly upon this ground (for no other is suggested), it has been held that every householder has a right to call upon the parish for a convenient seat (*f*). Perhaps, had

(*z*) *Tattersall v. Knight*, 1 *Phill.* p. 233.

(*a*) *Pym v. Gorwyn*, *Moor*, p. 878; *Ayliffe's Par.* p. 484; *Wood's Inst.* p. 94.

(*b*) *Tattersall v. Knight*, 1 *Phill.* p. 233.

(*c*) *Fuller v. Lane*, 2 *Add.* p. 425; *Pettman v. Bridger*, 1 *Phill.* p. 323.

(*d*) *Rogers v. Brooks & B.*, M. T., 24 *Geo. III.*, *B. R.*, cited in *Stocks v. Booth*, 1 *T. R.* p. 482 n.

(*e*) *Johnson's Canons*, A.D. 1018, No. 29.

(*f*) *Groves & R. v. Rector of Hornsey*, 1 *Hagg. C. R.* p. 194.

the point been more specially under consideration in several judgments on pew law, the word "parishioner" would have been substituted for "householder;" since it is difficult to understand that every individual resident parishioner should not reasonably require a like accommodation to that granted to each richer family through its rate-paying head. All alike are Christians, and members of the church of the nation; and those of the poorer class presumably have less opportunity than their richer neighbours of attending divine service, and of obtaining instruction in religion. In fact, as stated in various judgments, and explicitly in the Report of the Parliamentary Commission, the object to be attained is the general accommodation of all the parishioners (*g*).

CAP. II.
USE.

Parishioner
rather than
householder.

Church for use
of all.

190. Various decisions, probably for the sake of satisfying those who were most likely to be exigent (since the doctrine is not impressed with a stamp of high antiquity, and it appears to want any original legal basis), direct that though all are entitled to seats, yet a preference should be shewn for persons of the higher social standing in the parish; but still the rights of all are maintained, though not their equal rights which the early decisions emphatically uphold. The origin and gradual rise of this practice is shown fully in Book I., Chap. VI. of the present work.

Subsequent
doctrine of
preference.

191. The only early case is that in 1493, when Fitzwalter sued on a writ of trespass for breaking and carrying away his seat in church; when, in deciding against the plaintiff, the court said that perhaps the Ordinary would order for the gentlemen places convenient for them, and for the poor other convenient places (*h*). That the places for

Only early case
probably refers
to chancel.

(*g*) *Report of Com. on Eccl. Cts.*, 1832, 12mo. ed. p. 129.

(*h*) *Year Book*, 8 Hen. VII. 12.

CAP. II.
USE.

Parishioners' claim to seats according to rank; though all still entitled.

Long possession and other claims for consideration.

Doubt as to any allotment where there is not room for all the parishioners.

gentlemen were probably in the chancel will be seen on reference to Book I., Chap. VI. of the present work.

192. As laid down by Sir John Nicholl in the case of *Fuller v. Lane*, before referred to, the parishioners have a claim to be seated according to their rank and station; but, on the other hand, the churchwardens are not, in providing for them, to overlook the claims of *all* to be seated, if sittings can be afforded them. Accordingly, they are bound in particular not to accommodate the higher classes beyond their real wants, to the exclusion of their poorer neighbours, who are equally entitled to accommodation, though not to equal accommodation, supposing the seats not to be equally convenient (*i*).

193. The object to be attained is the general accommodation of all the parishioners, and in endeavouring to effect this due consideration must be paid to rank, station, number in family, long possession, and the particular state of the parish with respect to church room (*j*).

194. It will be seen, that by the common-law right, which is recognized and admitted in these decisions, all parishioners are equally entitled, and churchwardens are compellable by ecclesiastical censures to provide places for all. With the enormously increased, and still rapidly-increasing population, it has become an impossibility to provide seats for all, notwithstanding the number of additional churches annually consecrated. The question then arises, and has yet to be determined, whether churchwardens are bound to allot seats to some, to the seclusion of the rest of the parishioners, who would thereby be deprived of their original common-law right; and, if not bound, whether they can legally do so in the exercise of

(i) *Fuller v. Lane*, 2 *Add.* p. 426.

(j) *Rep. on Eccl. Cts.* p. 129.

their discretion, or under the immediate authority of the ordinary.

CAP. II.
USE.

195. It has been held that an inhabitant in a parish will probably have some permanent place for himself and his family to sit in. A person occupying a respectable station is not, each time he comes to church, to wait till the clerk or sexton allots a sitting to him (*k*). The idea of absolute freedom, such as once existed, had evidently been entirely lost sight of when this was said.

Parishioners are not to depend on clerk or sexton for seats.

196. Many decisions have been given, and dicta enunciated with reference to the powers and duties of churchwardens in the allotment of seats, which we proceed to mention in detail; but the right of *all* the parishioners to the use of the church must be borne in mind as a primary necessity, to which mode and powers of arrangement are subsidiary.

Arrangement is a question subsidiary to the rights of all the parishioners.

197. Generally speaking, the churchwardens act more correctly in allotting vacant pews to such parishioners as have the best claim to them, in point of standing in the parish and general respectability, rather than to those who happen to succeed as tenants of the houses inhabited by the late occupiers of those pews (*l*).

Preference of respectability to successors of former occupiers.

198. Where the churchwardens, in exercise of their right, seated a person of respectability, who had a large and increasing family, and who inhabited one of the principal houses, and paid highly to the parish rates, it was held that this might properly be pleaded, in defence of their conduct (*m*).

Wardens may plead several reasons for allotment.

199. Every man who settles as a householder has a right to call on the parish for a convenient seat, and if the

Additional church room must be pro-

(*k*) *Morgan v. Curtis*, 3 *M. & Ry.* p. 393.

(*l*) *Fuller v. Lane*, 2 *Add.* p. 438.

(*m*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 40.

CAP. II.
USE.

vided when
there is not
room for all.

Sed quære
now.

Doubt whether
beginning to
build consti-
tutes pa-
rishionership.

Wardens may
be cited for
neglect or
excess.

Citation to
show cause is
a convenient
proceeding.

Answer of "no
vacancy"
would be a
sufficient
return.

It is impossible
always to
supply

church is insufficient to the due accommodation of the parishioners, it is highly proper it should be enlarged, as this is an inconvenience against which the parish is bound, and may be compelled by ecclesiastical censures, to provide (*n*).

200. At least, it was so held by Lord Stowell in 1793; but since the churchwardens were deprived by the Act for the Abolition of Compulsory Church Rates (*o*), of the power of raising funds, it cannot be supposed that their liability to provide sufficient church room for all the parishioners any longer exists.

201. It seems extremely doubtful whether a person begins to be a parishioner at the time of building a new house in the parish in which he intends to, and afterwards does, reside (*p*).

202. If the churchwardens neglect or go beyond their duty in the seating of the parishioners, they may be cited in the Ecclesiastical Court (*q*).

203. Where the churchwardens were cited to show cause why they had not seated, or caused to be seated, the plaintiff and his family in the parish church, according to his station and condition, he being a principal inhabitant and parishioner, and having duly applied to them to be so seated; the court thought the process had issued very properly, and that this was a convenient mode of proceeding (*q*).

204. It would be a sufficient return if the churchwardens were to aver that they were unable to comply with the request, on the ground of there being no vacancies (*q*).

205. If that return were made and duly established, it might be entitled to much consideration, as, in the enlarged

(*n*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 194.

(*o*) 31 & 32 Vict. c. 102.

(*p*) See *Fuller v. Lane*, 2 *Add.* p. 432.

(*q*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 316.

population of many parishes, it may really not be in the power of the churchwardens to make immediate additions to the fabric, or to build chapels at once for the accommodation of the inhabitants (*r*).

CAP. II.
USE.

additional
church room
immediately.

206. But if there are existing pews improperly occupied, the mere offer of a permission to erect a pew is not a good return (*s*).

Offer of leave
to erect a pew
is not sufficient.

207. In exercising their duty the churchwardens must act with just discretion (*t*), and with due regard to any legal or equitable title (*u*).

Wardens must
act discreetly
and legally.

208. Where church room is abundant, and the population is thin, persons of large property and large families may have large pews allotted to them, which afterwards may be taken away or diminished, when circumstances change; as if their families become reduced in number, or the church room, from increase of population, becomes more wanted (*v*). The subordination of individual convenience to that of the parish is thus clearly laid down.

Where room
is abundant
large pews may
be allotted.

209. A single parishioner filed a bill against churchwardens, alleging their intention to execute works in the church which would be injurious to himself as a parishioner in habit of attending divine service. The vestry then passed a resolution to abandon the works altogether. The plaintiff still persisted, but his motion, made afterwards, was declared to be improper, and was refused with costs.

Whether works
in the church
are nuisance to
parishioner?

[*Quære*, whether this is a private nuisance and such bill could be sustained (*x*).]

210. The right being in the parishioners, it follows that

Non-parishioners

(*r*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 316.

(*s*) *Ibid.*, p. 317.

(*t*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 33.

(*u*) *Drury v. Harrison*, cited in *Parham v. Templar*, 3 *Phill.* p. 516.

(*v*) *Parham v. Templar*, 3 *Phill.* p. 523.

(*x*) *Woodman v. Robinson*, *Sim.*, 3 *N. S.* p. 204.

CAP. II.
USE.

can claim only
by prescription.

But some pro-
vision made
for them by the
Union of
Benefices Act.

non-parishioners and extra-parochial persons can have no possessory claim to seats in the body of the church, nor any title whatever except by prescription (*y*).

211. But where, under the Union of Benefices Act, a commission (appointed under the act) report that it is not expedient to carry into effect a proposed union, and that it would be expedient to afford improved accommodation for casual residents and non-parishioners, the bishop may, if funds be provided within two years, direct that one or more of the churches which had been proposed to be united, be re-seated accordingly, and after retaining sufficient for all the parishioners attending divine service the rest of the seats shall be free to non-parishioners in accordance with the report, but under the control of the churchwardens (*z*). A right, though of a peculiar and modified description, is thus granted to non-parishioners.

Possession
gives no claim
against
ordinary or
wardens.

212. Claims grounded on possession cannot be maintained as against the ordinary, or churchwardens under him, for they may displace and make new arrangements (*a*).

Mere posses-
sion good
against
disturbers.

213. An allotment of seats, by the authority of the churchwardens, gives a kind of possessory title, clearly good against a disturber; and it would even appear that an equally valid title may be acquired merely by an usurped occupation, at first with their concurrence; and afterwards, in the absence of objection from them, their consent will be presumed (*b*). But such a title in itself gives rise to serious litigation, and subsequently leads to an infinite number of claims to prescriptive titles (*c*).

(*y*) *Byerley v. Windus*, 5 *B. & C.* p. 1.

(*z*) 23 & 24 *Vict. c.* 142, s. 27.

(*a*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 322.

(*b*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 31.

(*c*) *Report on Eccl. Cts.*, p. 131.

214. Considering the weight which has, however, been attached to a possession under an allotment by the churchwardens, they ought not, without cause, to displace persons in possession; and if they do, the ordinary would reinstate them; the possession has its weight, and the ordinary would give a person in possession *cæteris paribus*, the preference over a mere stranger (*d*).

CAP. II.
USE.

And has weight with wardens and ordinary; and gives preference.

215. It being the clear law of this country that the use of pews belongs to the parishioners, and pews are allotted to them by the churchwardens subject to the control of the ordinary, it follows that a seating of this kind by churchwardens does not give a permanent and exclusive right and is not like a faculty, because it is liable to alterations as the circumstances of the parish may require (*e*).

But no permanent right.

216. It was also held, that though the faculty (with which the right had commenced) had expired, and though the party had no prescriptive title, yet so long as he lived and continued an inhabitant of the parish, in his present or some other respectable house, he had personally such a possessory right, as, except on very strong grounds of paramount necessity arising from an urgent want of accommodation for other persons, it would be improper to disturb (*f*).

Possession continued to grantee of expired faculty whilst in parish.

217. But (apparently), lest it should breed a prescriptive right, the court recommended, that if there were not very strong reasons to the contrary, the churchwardens should not continue the pew to the occupier of the late faculty holder's house (*g*).

But not to his successors in the house.

218. Still the court will not go out of its way to confirm possession, for this might be attended with injurious conse-

Court will not usually confirm possession to them.

(*d*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*e*) *Parham v. Templar*, 3 *Phill.* p. 523.

(*f*) *Ibid.* p. 733.

(*g*) *Ibid.* p. 736.

CAP. II.
USE.

Court confirming a displacement need not adopt wardens' allotment.

quences to the parish, and it would countenance the idea, which rather ought to be checked, that the pew is specially appropriated to the house (*h*).

Possession implies due allotment.

219. Therefore in a suit for perturbation of seat, if it appear that the churchwardens have acted properly in displacing the plaintiff, the court will dismiss them; but will not proceed to confirm the possession of the person seated by them, as it does not form part of the question before the court (*h*).

Six years insufficient against disturber.

220. A possessory right to a pew is sufficient to maintain a seat against a mere disturber; the fact of possession implies either the actual or virtual authority of those having power to place (*i*).

Non-parishioners' possession for 100 years gives no right.

221. But six years' possession is not sufficient against a mere disturber (*h*).

222. And a possession of upwards of one hundred years was held not to give to the Society of Staples' Inn, which is extra-parochial, even a possessory title to certain pews in the church of St. Andrew, Holborn (*l*).

Twenty years and upwards sufficient.

223. And where a person set up a possessory right in a pew that his grandfather had an estate and pew for twenty years and that he succeeded to it, that right was held good against a mere disturber (*m*).

As against wardens may rest on possession, acquiescence, and suitability.

224. On the one hand it was held that a suit against the churchwardens for perturbation of seat may rest on a possessory title, and acquiescence of former churchwardens, and on the fitness of the party, from the number of his family or amount of property, to occupy it; supposing that the churchwardens have acted arbitrarily (*n*).

(*h*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 41.

(*i*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*l*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 322.

(*l*) *Byerley v. Windus*, 5 *B. & C.* p. 1.

(*m*) 2 *Rolle's Abr.* p. 288.

(*n*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 40.

225. And on the other hand that a bare possession can never give a right of action for the disturbance of a pew, because every parishioner has a right to go into the church. If a person does not take the trouble to apply to the ordinary for a faculty, or to the minister and churchwardens to allot him a seat, he cannot maintain an action against a wrong-doer. For if bare possession were allowed to be a sufficient title, it would be an encouragement to commit disorders in the church (*o*).

CAP. II.
USE.

Bare possession will not ground an action for disturbance.

226. A person having permission from the churchwardens to sit in a pew temporarily, and in order, by keeping possession for a future tenant, to carry into effect the conditions of sale of a house, to which the pew had been attached for ninety-nine years under a faculty since expired, was held to have no possession on which he could bring a suit for perturbation against a mere intruder, such permission being illegal, as confirming the sale of the pew (*p*).

Temporary permission insufficient for suit for perturbation

227. In one case it was said that a possessory right may be good as against a disturber, although the possessor admitted his title to have been acquired by purchase (*q*).

Title even by purchase might suffice.

228. And, on the contrary, it was said in another case that a title must not be pleaded as founded on purchase, hiring, and private bargain, all which are illegal and void (*r*).

Other decision to the contrary.

229. But a possessory title to a seat in a church, acquired by purchase from another individual twenty years previously, is a sufficient ground for resisting the grant of a faculty to another claimant (*s*).

Possession gives a standing to oppose grant of faculty.

(*o*) *Stocks v. Booth*, 1 *T. R.* p. 430.

(*p*) *Blake v. Usborne*, 3 *Hagg.* p. 735.

(*q*) *Wilkinson v. Moss*, 2 *Lee*, p. 260.

(*r*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 37.

(*s*) *Wilkinson v. Moss*, 2 *Lee*, p. 259.

CAP. II.
USE.

Burthen lies
on disturber to
prove his right.

230. The burthen of proof lies upon the disturber to show that he has been placed in the pew by the actual or virtual authority of those having power so to place: or he must justify his disturbance by showing a paramount right—that is, a right paramount to the ordinary himself, as in the case of a faculty by which the ordinary has parted with the right (*t*); or a prescription and such immemorial usage as presumes the grant of a faculty.

Possessor dis-
turbed should
bring suit for
perturbation.

231. A person in asserting his right to a seat should not endeavour to gain possession of the pew by forcible means, as, for instance, by wrenching off the lock, but he ought to sue the occupier for a "*perturbation*" (*u*).

Whether seats
to be kept
vacant.

232. Doubts have been often entertained whether in the event of any persons to whom seats are allotted by the churchwardens, not being present and occupying them at the beginning or at any specified part of divine service, the seats can be made available for other persons during that, or the remainder of that service; but the question seems never to have been tried.

As to right of
clergyman's
family to a
seat.

233. It was said by the court that where the clergyman is in possession of sittings for his family in an ancient parish church, he appears to have such a possessory title, that neither the vestry nor any individual can molest or disturb him (*x*). But it is by no means obvious upon what authorities or reason this dictum is based.

Payment gives
no title to
pews.

234. Payment in any form gives no right: as pews in a parish church are not the subjects of private property, no possessory right can be founded on purchase, hiring, or private bargain; as by the established principles of law, no title to pews can rest on any such foundation (*y*).

(*t*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*u*) *Woollocombe v. Ouldrige*, 3 *Add.* p. 3.

(*x*) *Spry v. Flood*, 2 *Curt.* p. 359.

(*y*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 37.

235. Neither the parishioners by their consent, nor the ordinary, nor any power but the legislature, can deprive the inhabitants of their general right; and such acts as demanding money for pews are contrary to the law of the land (z).

CAP. II.
USE.

Pew-rents are
contrary to law.

236. It is clearly the law that a parishioner has a right to a seat without payment; and it is a wild conceit that there can be such use made of pews as of villas, or other common property (a).

Pews cannot be
treated like
villas.

237. The practice of letting pews, and applying the rent to ease the parish rate, or indeed for any other less specious pretence, is a practice which has been constantly reprehended by the ecclesiastical courts as often as it has been set up (b).

Letting pews
always repro-
hended by the
court.

238. It is clear that the practice under the sanction of a vestry, of letting and selling of pews would be illegal and null, however much custom, in contravention of the law, may have prevailed in the parish. An act of parliament alone can render such a sale legal (c).

Practice, under
sanction of
vestry, is
illegal.

239. Where the churchwardens and vicar, in order to pay the expenses of new pews, had assigned pews to certain persons, their heirs, executors, &c., for sums specified, the court held this to be illegal, and that the churchwardens might seat the parishioners in those pews as if no such order had been made (d).

Assignment
(for money)
by vicar and
wardens con-
fers no rights.

(z) *Astley v. Biddle*, 1 *Hagg. C. R.* p. 318, n.

(a) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* pp. 317 & 319.

(b) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 318; *Wyllie v. Mott & F.*, 1 *Hagg.* p. 33.

(c) *Craig v. Watson*, unpub.: citing *Stevens v. Woodhouse*, 1 *Hagg. C. R.* p. 318 *in notis*; and *Walter v. Gunner & D.*, reported *Ibid.*; and *Wyllie v. Mott & F.*, 1 *Hagg.* p. 37.

(d) *Fuller v. Lane*, 2 *Add.* p. 427; *Churchw. of Kensington v. Trier Consist.* 1721, cited 1 *Hagg. C. R.* p. 318, n.; *Stevens v. Woodhouse*, *Arches*, 1792, cited *Ibid.*

CAP. II.
USE.

Gives no power
of sale.

Court cannot
inquire into
terms between
parishioners
and contri-
butor.

Custom to sell
is illegal.

Wardens
directed not to
sell the seats.

Though the
payment be
altogether
illegal,

240. A vestry granted for 10*l.* a pew to a man and his assigns, appropriated to such house as he should build. He assigned to another, who applied for a faculty. The court disallowed the applicant's claim to a pew, and ordered him to be placed in the common part of the church (*e*).

241. The court has no authority to institute or control any inquiry as to what private understanding may have been come to between the parishioners and a contributor to the enlargement of a church; or whether the conditions have been mutually fulfilled or not, or what relation his subscription may bear to the other subscriptions (*f*).

242. In a suit of perturbation, where the party pleaded purchase and the custom of the parish, the court rejected the libel and held the custom illegal (*g*).

243. A parishioner resident for forty years, and occupant of a pew during the same time, was required by the churchwardens to pay a rent for it, alleging such to be the custom; and on his refusal, one of them placed another person with him in the seat. A suit for "perturbation of seat" was brought against this churchwarden, and the court thought he had made an improper use of his authority, and directed the churchwardens should not sell the seats (*h*).

244. In a libel for perturbation of seat, an article alleged that on the building of a gallery the churchwardens and vestry had sold the seats, and that the pews in question had been purchased and paid for nearly twenty years before. The court held that this was alleging what from beginning to end was an illegal transaction,

(*e*) *Harford v. Jones*, Consist. 1724, cited in 1 *Hagg. C. R.* p. 318, n.

(*f*) *Craig v. Watson*, unpub.

(*g*) *Hole v. Burnet*, Consist. 1740, cited 1 *Hagg. C. R.* p. 318, n.

(*h*) *Astley v. Biddle & R.*, cited 3 *Phill.* p. 517, and 1 *Hagg. C. R.* p. 318, n.

and could furnish no ground of title; the money paid could only be considered as *voluntary* contributions and subscriptions towards the building. It may be a reason in the discretion of the churchwardens for seating these persons, and such seating may give a possessory right sufficient against a mere disturber; but if the court were to admit the pleading it would lend a countenance to a proceeding contrary to law (*i*).

CAP. II.
USE.

it may influence wardens' discretion and so obtain possessory title.

245. Such sale and purchase do not improve, they rather operate against the claim; because, if a party seeks to found his title on an illegal origin, it goes far to justify his removal (*k*).

But operates against title claimed as against the wardens.

246. It is now distinctly held that the churchwardens may remove persons, originally placed in seats, or their descendants; but if they do so capriciously, or without just ground, the ordinary will control and correct them (*l*).

Wardens may alter possession but not capriciously.

247. If the churchwardens interfere to take away a seat, and, *à fortiori*, to take it to themselves, the ordinary will interfere, as by a suit of perturbation of seat, although it were not originally meant for that purpose (*m*).

Nor especially if for their own advantage.

248. In many churches their power over seats is never exercised by the churchwardens, and particular houses and families are allowed to have permanent pews (*n*).

Such power is often not exercised.

249. In such cases the power of removal is not to be exercised, except in a case of strong necessity; but such power, in order to provide for the convenient attendance of the other parishioners upon Divine Service, ought not to be taken away from the churchwardens (*o*).

And only in case of necessity for convenience of others.

(*i*) *Wyllie v. Mott & F.*, 3 *Phill.* 523.

(*k*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 30.

(*l*) *Parham v. Templar*, 3 *Phill.* p. 523.

(*m*) *Drury v. Harrison*, cited in *Parham v. Templar*, 3 *Phill.* p. 516.

(*n*) *Morgan v. Curtis*, 3 *M. & Ry.* p. 394.

(*o*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 41.

CAP. II.
USE.

And still more
from the
necessity of
subsequent
times.

And as a pro-
vision against
the growth of
prescriptive
right.

Practice of
families being
seated together.

To avoid
mixing dif-
ferent families.

250. Although it was the opinion of Lord Stowell that the churchwardens of their own authority could not interfere with a possessory right, without reference to the ordinary, yet Dr. Lushington, in a subsequent case, alluding to this opinion, said, that perhaps, later cases may have extended their power, and the necessity of the times may have allowed a different practice to grow up, and it may be competent to them to act without any authority of the ordinary previously conferred (*r*).

251. In fact, it seems desirable that the occupancy of pews should be altered from time to time, according to circumstances, as the best provision against the birth and growth of those prescriptive rights to pews, as *in* certain families, or *annexed* to certain messuages, the existence of which is so injurious to the general interests of the parishioners (*s*).

252. By habit, it no doubt becomes a matter of feeling with many to perform their religious duties by the sides of their wives and families, and, in some respects, it is a matter of practical benefit, so far as may be, to indulge this feeling. Parents in that case are more attentive, as setting an example to their children, who are likely to be, and, undoubtedly, in many instances are, benefited by that example. As a matter, therefore, both of feeling and practical advantage, families should be seated together in church, where this can be done (*t*).

253. Thus, if the population be increasing, and the church room already insufficient, and there be a pew capable of accommodating seven or eight persons, and the family using it be reduced to one or two, it may be

(*r*) *Spry v. Flood*, 2 *Curt.* p. 357.

(*s*) *Fuller v. Lane*, 2 *Add.* p. 438.

(*t*) *Ibid.* p. 434.

proper, either to remove such family altogether, or, at least, to seat some other persons in the same pew (*u*).

CAP. II.
USE.

254. In a case decided in 1793, when it was suggested that the churchwardens might put different families into the same pew, as the pews were not appropriated by any faculty from the ordinary, and that these pews would afford more sittings, the court held, that there was nothing so extravagant in an addition which it had been proposed to make to the church, as to induce the court to adopt in preference to such addition a proposal to place individuals of different families into the same pews, which might produce contention and inconvenience (*x*).

Formerly held that different families should not be put in one pew.

255. But in 1832 it was decided that, if there was not any one large family of long standing and respectable station in the parish who wanted such a pew as that in question, the churchwardens might place in it two or three families, giving them sittings in proportion to their numbers; for in a dense and increasing population a pew may be allotted in portions and sittings, if the exigency of the parish renders such an exercise of discretion expedient and proper (*y*).

But now otherwise.

256. And without any interference on the part of the churchwardens any temporary possessory right ceases of itself under certain circumstances. Thus, there can be no doubt that a mere possessory right ceases when the use and occupation cease (*z*); and when a man quits the parish, his right to use a seat is at an end, because he has ceased to be a parishioner (*a*), and therefore if he per-

Possessory right ceases on abandonment or on leaving the parish.

(*u*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 41.

(*x*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 194.

(*y*) *Blake v. Usborne*, 3 *Hagg.* p. 734.

(*z*) *Woollocombe v. Ouldrige*, 3 *Add.* p. 7.

(*a*) *Byerley v. Windus*, 5 *B. & C.* p. 18; *Fuller v. Lane*, 2 *Add.* p. 427; *Parham v. Templar*, 3 *Phill.* p. 523.

CAP. II. USE.	severes and sits there in spite of the churchwardens, he is an intruder.
Pew then reverts to parish.	257. The occupier of a pew, ceasing to be an inhabitant of the parish, cannot let the pew with, and thus annex it to his house, but it reverts to the disposal of the churchwardens (<i>b</i>).
Custom for owners of houses to let appurtenant pews is illegal.	258. A custom was pleaded that pews are appurtenant to certain houses, and are let by the owners to persons who are not inhabitants of the parish; it is evidently illegal and cannot be supported (<i>c</i>).
Otherwise it would become an annexation.	259. If a person letting his house from year to year were permitted to transfer the possession of a pew to each succeeding tenant, this would amount in effect to an annexation (<i>d</i>).
All previous right ceases.	260. And if such persons return to the parish and take possession of the pew, as a matter of right, they are mere intruders, and the churchwardens may remove them (<i>e</i>).
Liable to defeazance by the ordinary at any time.	261. Such a possessory right was originally liable to defeazance by the ordinary, and by the churchwardens, as officers of the ordinary, even during the claimant's continuance in the parish. And it ceased and determined <i>ipso facto</i> , upon his ceasing to be a parishioner, and the pew reverted to the parish at large, and became as liable as any other pew in the church to the disposal of the ordinary, and of the churchwardens, as his officers (<i>f</i>).
It ceases by a quasi abandonment.	262. Where a person who had sat in a pew for many years, was dispossessed of her sittings by another person, she withdrew from the pew altogether, and sat in a differ-

(*b*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 39.

(*c*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 317.

(*d*) *Wyllie v. Mott & F.*, 1 *Hagg.* p. 40.

(*e*) *Parham v. Templar*, 3 *Phill.* p. 524; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*f*) *Fuller v. Lane*, 2 *Add.* p. 424.

ent part of the church; although she all along dissented, yet she did not enter any formal protest, or institute any formal complaint for a year, when, upon her application for sittings elsewhere being refused by the churchwardens, she asserted her right to the pew in question. But it was held that her possessory right to the sittings had been lost by this *quasi* abandonment (*g*).

CAP. II.
USE.

Possessory
right ceases
by a quasi
abandonment.

263. If a person having possession of a pew obtains the grant of a faculty for one elsewhere, his previous right is thereby determined.

Determined by
grant of
faculty for
another seat.

264. So when a person is indulged with a gallery, the parish ought to compel him to exchange his own pew for that accommodation. For he ought to be required either to go back to his own proper pew, or give it up to the parish (*h*).

Or a gallery.

265. And under the Church Building Act of 1856, where a resident within any new parish or district formed under the provisions of the Acts of 1845 and 1844, has claimed and had allotted to him sittings in the church of such new parish, he thereby surrenders an equal number of sittings in the original parish church which he may have possessed under any other title than faculty or act of parliament (*i*).

On obtaining
allotment in
church of new
parish or district.

266. The court would be unwilling to give currency to an opinion that a parishioner, when a pew is vacant, is justified in stepping into and occupying it (*i.e.* permanently) without legal authority. The successor of persons so acting ought not, therefore, to be continued in the pew, though he ought to be properly seated (*k*).

Parishioner has
no right to
take possession
of a vacant
seat.

267. And as the churchwardens have a right to exercise a reasonable discretion in directing where the congregation

Wardens
remove in-
truders and

(*g*) *Woollocombe v. Ouldrige*, 3 *Add.* p. 3.

(*h*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 319.

(*i*) 19 & 20 *Vict. c.* 104, s. 5.

(*k*) *Blake v. Usborne*, 3 *Hagg.* p. 736.

CAP. II.
USE.

use necessary
force.

May be con-
demned in
damages for
trespass, if
guilty of
unnecessary
force.

Person may be
removed out of
church if likely
to interrupt
the service.

shall sit, they may remove persons intruding into seats already appropriated. But they must use no unnecessary force and be able to effect the removal without public scandal, or disturbance of divine service (*l*).

268. A. claimed a right to sit in a particular pew in his parish church, in respect of a house and farm which he occupied there. B., another inhabitant, also claimed an exclusive right to the same pew for himself and family. The churchwardens had been appealed to on various occasions, and had given notice to A. that the pew belonged to the B. family. The churchwardens, on being applied to by B., went to the pew and desired A. to quit it, which he refused to do, upon which one of the churchwardens laid his hand on him, with a view to force him out, upon which A. rose and walked away. The congregation were assembling, but the clergyman had not entered the church. A. brought an action of *trespass*, for an assault and battery against this churchwarden; and the jury, thinking that some unnecessary force had been used, though the evidence on that subject was contradictory, found a verdict for the plaintiff, with *5l.* damages (*m*).

269. A parish clerk having been dismissed from his office by the rector, though irregularly, and another appointed, the former entered the church before divine service had commenced, and took possession of the clerk's desk by climbing into it from an adjoining pew. It was held by the Court of Exchequer that the churchwardens were justified in removing him from the clerk's desk, and also out of the church, if they had reasonable ground for believing that he would offer interruption during the celebration of divine service (*n*).

(*l*) Reynolds v. Monkton, 2 *M. & Rob.* p. 385.

(*m*) Ibid. p. 384.

(*n*) Burton v. Henson, 10 *M. & W.* p. 105.

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION b.

RECTOR'S SEAT.

b. RECTOR'S SEAT.

270. THE rector is entitled to the chief seat in the chancel (*a*). Rector has chief seat in chancel.
271. The distinction in the appropriation of the nave and aisles to the congregation, and the chancel for the celebration of divine service, is very apparent. The parishioners generally are permitted to use the chancel at specified periods and for a specified purpose. The rector or incumbent has, from the earliest period, had his special place there. Nave for people, chancel for clergy.
272. This fact is sufficient to account for his right to the chief seat in the chancel. But, besides this, he has a further and independent claim in respect to his keeping the chancel in repair, as he is bound to do (*b*). Rector repairs chancel.
273. On the former ground the vicar had the right of sitting there before the Reformation, and consequently must retain this right still, unless it appear that he has quitted it (*c*). Vicar also has a seat in the chancel.
274. As a vicar is one who is substituted for the rector to serve the church (the tithes being in the hands of a Also perpetual curate.

(*a*) Hall v. Ellis, *Noy*, p. 133 (pub. 1656); Clifford v. Weeks, 1 B. & A. p. 506.

(*b*) Hall v. Ellis, *Noy*, p. 133.

(*c*) Burn's *Eccl. Law*, Fraser's (7th) ed., 1, p. 363; Johns. p. 269.

b. RECTOR'S SEAT. lay rector), so a perpetual curate stands in the vicar's place (*d*).

But that has been questioned.

275. But it has been doubted whether a perpetual curate has a right to a seat in the chancel; for perpetual curates were formerly mere stipendiary curates, and had no vested rights till long after the time of legal memory (*e*).

Doubt seems limited to his family.

276. These observations as to the rights of perpetual curates were made only *ex majori cautela*, and not as giving any opinion as to what these rights were (*f*), and appear to apply rather to seats for the clergyman's family than for his own use.

Incumbent's right can scarcely be doubted.

277. In fact, one would think it scarcely open to doubt that the incumbent of the church, whether he be styled rector, vicar or perpetual curate, must possess such a right, in order to enable him to perform the most important and essential part of his duties in the celebration of divine service: it is not reasonable to suppose that the seat would be possessed by him for occupation simply as one of the congregation, or that it could be recognized as permissible for him to look on while some one else performs his highest function and duty.

Lay impropiator has rector's right, unless otherwise by prescription.

278. A lay impropiator, it is said, has the right which a rector would have had, to the chief seat in the chancel (*g*), and *per consequens*, his farmer; but by prescription another parishioner may have it (*h*).

Doubt as to action for disturbance.

279. It has been doubted whether an action at common law cannot be maintained for a disturbance of a seat in the chancel, as it may be the freehold of an individual (*i*).

(*d*) *Doe d. Richardson v. Thomas*, 9 *A. & E.* pp. 571, 573.

(*e*) *Spry v. Flood*, 2 *Curt.* p. 358.

(*f*) *Ibid.* p. 360.

(*g*) *Ayliffe's Parer.* p. 486; *Gibson's Co.* p. 222; 1 *Burn's Ecol. Law*, p. 363.

(*h*) *Hall v. Ellis, Noy*, p. 133.

(*i*) *Mainwaring v. Giles*, 5 *B. & A.* p. 361.

280. A rule has grown up, and is adopted in the Church Building Acts, that the rector's family are also entitled to a pew in the chancel. And, it is said, that where the parson repairs, the vicar claims the right on behalf of his family, as well as the right to give leave to bury there and receive a fee for his permission (*k*). It is difficult to understand on what ground such a custom, for the incumbent's family to possess a pew in the chancel, can be founded. History shows, positively, that it did not exist at any early period.

b. RECTOR'S SEAT.
Rector's family entitled under the Church Building Acts.

281. As regards the family of a perpetual curate it was held, that there was great difficulty in assenting to the proposition that they have a common-law right to sittings in the church. A perpetual curate may be a mere stipendiary curate, the impropriation being *in utroque jure*, for the monasteries had cure of souls, and performed the duties of the church by stipendiary curates; and since the suppression of these monasteries, the impropriator might have the complete incumbency (*l*). It was not till A.D. 1756 that Lord Hardwicke interfered to protect the rights of the curates; but these were not common-law rights; so that if it be meant that a curate is to be protected in his title and sittings for his family by common-law right, as having existed from the time of Richard I., the court would have great difficulty in assenting to such a doctrine (*m*).

Whether the family of a perpetual curate are entitled is doubtful.

(*k*) Johnson's *Cl. Va. me.*, p. 269; followed by 1 Burn, p. 363.

(*l*) Duke of Portland v. Bingham, 1 *Hagg. C. R.* p. 157.

(*m*) Spry v. Flood, 2 *Curt.* p. 353.

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION c.

PRIVATE SEATS.

CHAPTER I.

CAP. I. FACULTY.

FACULTY.

The grant of a faculty. 282. A FACULTY or licence is a grant made by the consistory court of the bishop, held before his chancellor, commissary, or vicar general, for all ecclesiastical causes within his diocese (*a*).

Faculties are public or private.

283. Faculties appear to be of two descriptions:—
1st. Those which are public in their nature, and have for their object the benefit of the parishioners generally.
2ndly. Those which are private, and are for the exclusive benefit or convenience of an individual (*b*).

Public faculties.

284. Of the first sort are faculties for pewing a church, erecting a gallery or organ, making a church path, building a vestry-room and the like (*b*). Also for repairing, or enlarging, or rebuilding a church.

Private faculties.

285. Of the second sort are those which are granted to secure to some individual or family the exclusive use of a pew or vault, or to give permission for the erection of a monument or tablet, the removal of a corpse to another place of burial, or for privileges of a similar sort (*b*).

(*a*) Comyn's *Dig. "Courts,"* N. 6.

(*b*) Rogers' *Ecol. Law*, p. 433.

286. Different considerations affect a grant for the purpose of building an aisle to those which must be considered in respect to a grant of a seat elsewhere (*c*). In the one case the parishioners' normal right to the use of the church in common is not affected; there is an addition to the church by which no one is damnified, and some little additional room is gained by the removal of the family which builds the aisle. In the other case a benefit is purported to be granted to one parishioner to the exclusion, and so far to the injury of the others; a point which merits much consideration.

CAP. I.
FACULTY.

Considerations affecting grant of faculty for an aisle, different to one for seat elsewhere.

287. As regards a faculty for an aisle, no doubt has been suggested that the bishop has full power, and should any gentleman, having a house in the parish, build a new aisle with the consent of the clergyman, patron, and ordinary, and have a faculty from the bishop to hold the same to the use of him and his family, to bury their dead in the aisle, and also to sit there for hearing divine service, on condition constantly to repair it, this faculty would give him a good title to the aisle (*d*). But there is a wide difference between seats in the body of the church and those in a minor chancel or chapel (*e*).

Unquestionable right to grant faculty to build and appropriate an aisle.

288. In the event of abandonment of his rights by the holder of a faculty, the seats would naturally revert to the disposal of the churchwardens and ordinary.

On abandonment of faculty rights, seats revert to parish.

289. As regards a faculty of the second description the doubt which has been suggested as to the right or duty of the bishop to allot seats to some individuals in preference to the rest in building admittedly for the use of the parishioners in common, applies with double force to a more permanent appropriation by faculty.

Doubt as to power of granting faculty to injury of other parishioners.

(*c*) *Fuller v. Lane*, 2 *Add.* p. 427.

(*d*) *Frid.* p. 299.

(*e*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 281.

CAP. I.
FACULTY.

It requires
cession of
their rights.

290. It would seem that in order to a valid grant of a seat to an individual (for it is in the nature of a grant rather than a licence) the rights of the other parishioners must be ceded. The churchwardens consented to the grant, in some of the early cases, but it could scarcely be contended that in virtue of their office they had authority to cede the rights of the whole parish for a time, and still less for a permanence; and clearly the ordinary could have no inherent authority to cede the rights of the parishioners.

And then some
consideration
is necessary;
but none given.

291. Nor could the rights be ceded, except for a consideration, and none is suggested. It cannot be the building of the pew, for that is no consideration received by the parish, but merely an act for the individual's own benefit; nor repairs, for they are a subsequent act, and only for the same object. Nor residence, for that exists equally before and after the application for the faculty. Nor can it be a pecuniary consideration; for even where, as in the case of contribution towards the erection of a gallery, money is paid, it is not as a consideration for a faculty, but as a donation towards the building.

And parish-
ioners cannot
be by any one
deprived of
their rights.

292. Further, it is held that neither the parishioners by consent, nor the ordinary, nor any power but the legislature (which can overrule all previously existing law) can deprive the inhabitants of a parish of their general right; and attempts to do so would be contrary to the law of the land (*h*).

Appropriation
to individuals
seems un-
reasonable.

293. On the other hand, an appropriation to a family seems contrary to reason, for if the ordinary may appropriate one seat to a house, he by the same reason may appropriate all the seats in the church to several houses, and so no room would be left for the other inhabitants (*i*) who have equal rights to the use of the church.

(*h*) *Steevens v. Woodhouse & B.*, 1 *Hagg. C. R.* p. 318, n.

(*i*) *Watson*, p. 385.

294. Watson especially doubts whether the ordinary *can* make a grant to bind posterity, as he cannot make a grant to a house (*k*)—persons only, and not things, being capable of grants (*l*). For it was said by Lord Coke, that in the body of the church a pew cannot belong to a house (*m*). CAP. I.
FACULTY.
Especially as
to grants to
a house.

295. If it be said that the grant may be good to the present possessor of a house, and to the persons who in after time shall be possessors of such house, as a privilege annexed to that house; yet such a grant appears as unreasonable as if it had been made to a person and his heirs (*n*). To successive
occupiers of a
house appears
unreasonable.

296. For if by the ordinary's grant, it may belong to a house, it must belong to the owners of the house, and must go with the house to a person and his heirs; and so a grant to the present and future possessors of a house, and to a man and his heirs, will have the same inconvenience (*n*). And as incon-
venient as if to
a man and
heirs.

297. For the owner of a house may remove into another parish, and have no tenant, and yet retain the seat, if it may by such grant belong to a house (*n*). House may be
untenanted.

298. It became, however, the practice of the ordinaries through their courts to grant such faculties, and their right to do so has not been questioned at law; and we proceed with the points which have been determined respecting them. It will appear that many such grants were void *ab initio*, and others partially void. It became the
practice, and
without ques-
tion.

299. There does not appear any instance in modern times of an annexation of a pew by faculty to a house or No modern an-
nexations to
houses.

(*k*) Watson, p. 392.

(*l*) Haynes' Case, 12 *Coke*, p. 113.

(*m*) 1 *Brown. & Gold*, p. 45.

(*n*) Watson, p. 385.

CAP. I.
FACULTY.

Though
apparently
essential to a
faculty for
seats.

message (*g*); and a faculty of this description (obtained by surprise) was revoked (*r*).

300. And yet such an annexation would seem in certain cases to be essential to the validity of the appropriation by faculty. Recently it was held in the Arches Court, that a faculty empowering certain parishioners to set up a gallery at the west end of a church, with seats for themselves, and their families, but not assigning a seat to any particular house, is bad (*s*); so far, at least, as to the grant of any exclusive rights.

If annexed
goes with
house.

301. If by faculty a pew be annexed to a message, it may be transferred with the message to another person (*t*).

Landlord
cannot restrain
tenant from
its use.

302. And if a seat be appurtenant to a house, the owner of the fee cannot restrain his tenant from the use of it, because the seat is for the benefit of the house; namely, for the inhabitants of the house, and not for the benefit of the owner, if he cease to inhabit it (*u*).

Nor retain it
to himself, nor
let it.

303. Thus, where a person let his house and lived out of the parish, but covenanted with his tenant that he should not occupy the pew, in order that it might be let to others, this was held to be clearly illegal; for if a pew is rightly appurtenant, the occupancy of it must pass with the house, and individuals cannot, by contract between themselves, defeat the general right of the parish (*x*).

Appropriation
to families

304. It is also very proper that the faculty should not

(*g*) *Butt v. Jones*, 2 *Hagg.* p. 423 (A.D. 1829).

(*r*) *Ibid.* p. 426.

(*s*) *Craig v. Watson*, unpub., citing *Chapman v. Jones*, 4 *Ex.* p. 280, as confirming the existing law on this subject.

(*t*) *Stocks v. Booth*, 1 *T. R.* p. 481; *Wyllie v. Mott & F.*, 1 *Hagg.* p. 39.

(*u*) *Byerley v. Windus*, 5 *B. & C.* p. 19; *Fuller v. Lane*, 2 *Add.* p. 428.

(*x*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 319.

appropriate the seats to the messuages, but rather to families resident in the parish (*y*).

CAP. I.
FACULTY.

305. Great inconvenience has been found to arise from pews having been so annexed; for the houses become dilapidated; the inhabitants of them fail in their circumstances; new houses are erected, and the occupiers of them want pews (*y*).

better than to houses.

Great inconvenience caused by annexing to house.

306. The right to sit in a pew may be apportioned; and, therefore, where by a faculty a pew was granted to a man and his family for ever and the owners and occupiers of his dwelling-house, and the dwelling-house was afterwards divided into two; it was held, that the occupier of one of the two (constituting a very small part of the original messuage) had some right to the pew; and, in virtue thereof, might maintain an action against a wrongdoer (*z*). It may be presumed that in case of a part of the pew being abandoned, the right to such part would not survive to the owner of the other part; their tenure would be more in the nature of tenants in common than of joint tenants.

Pew under faculty apportionable amongst occupiers of divided house.

Whether then held in joint tenancy.

307. No title can be good, either upon prescription or upon any new grant by a faculty from the ordinary, to a man and *his heirs*; for the pew must always be supposed to be held in respect of the house, and will, therefore, go with it to each successive inhabitant (*a*); otherwise when the person goes to dwell in another place, yet he should retain the seat, which is not in reason (*b*).

Faculty to a man and his heirs is bad.

308. The reason a faculty to a man *and his heirs* is bad, is, that as a seat in a church does not belong to the

They may reside out of the parish.

(*y*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*z*) *Harris v. Drewe*, 2 *B. & Adol.* p. 164.

(*a*) 12 *Coke*, p. 106; 1 *Burn*, p. 360; *Stocks v. Booth*, 1 *T. R.* p. 432; *Walter v. Gunner & Drury*, 1 *Hagg. C. R.* p. 319; *Harris v. Wiseman*, *Winch.* p. 19.

(*b*) *Brabin v. Tradum*, *Poph.* p. 140; *Gibson's Co.* p. 221.

CAP. I.
FACULTY.

person, but to the house, a man's heirs may reside out of the parish, and it would be an unjust usurpation from the parishioners to retain such a privilege for the use of others (*d*), as the right to a seat, whether the man and his heirs continue resident or not (*e*).

Bad where
house no
longer exists.

309. In the case of pews claimed as appurtenant to a messuage which the claimant had purchased, but which messuage is no longer in existence, such claim is bad (*f*).

Cannot belong
to land.

310. Nor can a seat be claimed, either by faculty or prescription, as appurtenant to land, because it is in respect to inhabitancy that it is to be used (*g*); and the ordinary himself cannot grant a seat as appurtenant to land (*h*).

Nor to non-
parishioner.

311. Nor has the ordinary power to make a legal grant, by faculty or otherwise, of a seat to a non-parishioner; such faculties are, so far, at least, merely void, that no faculty is deemed, either in the Ecclesiastical Court or at common law, good to the extent of entitling any person who is a non-parishioner to a seat, even in the body of the church (*i*).

Nor to house
out of the
parish.

312. It was discussed but not decided in *Hallack v. University of Cambridge* (*k*), whether a faculty could be granted to appropriate a pew to a person in respect of a house out of the parish. It would appear, however, that such faculty cannot be legally granted (*l*).

Nor to extra-
parochial
persons.

313. No distinction can be made among non-parishioners; the extra-parochials infringe equally upon the

(*d*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 321.

(*e*) *Gibs. Co.* p. 221; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*f*) *Craig v. Watson*, unpub.

(*g*) *Gibs. Co.* p. 221; *Co. Litt.* p. 121 b.; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*h*) *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*i*) *Fuller v. Lane*, 2 *Add.* p. 427; *Byerley v. Windus*, 5 *B. & C.* p. 18.

(*k*) *Hallack v. Univ. of Camb.*, 1 *Q. B.* p. 614.

(*l*) *Fuller v. Lane*, 2 *Add.* p. 427; *Byerley v. Windus*, 5 *B. & C.* p. 18.

rights of the parishioners with those who belong to another parish. They are equally non-contributory to the expenses of the church. It is the fault of those under whom they claim that they have no parish. They have the advantage of being extra-parochial; they must take the disadvantages also (*m*).

CAP. I.
FACULTY.

314. A faculty for erecting a pew, which contains a clause permitting the party erecting it to let it, would be (so far?) illegal (*n*). Clause empowering letting illegal.

315. Even where an occupier has purchased a seat erected under a faculty containing a clause, permitting the party erecting it to sell it, this is no bar to the common law right of the parishioners, as such permission in the faculty is illegal. The practice of making such rules may have frequently prevailed, but it has constantly been discountenanced by the court (*n*). Power of sale illegal.

316. That a party having had a seat allotted should further obtain sufficient room for her accommodation elsewhere, and be allowed to let out her pew to persons not resident in the parish, is an abuse which cannot be maintained; for it is a wild conceit that there can be such use made of pews, as of villas or other common property. It is sufficient indulgence which is usually given by faculties in granting the exclusive use, but no faculty was ever granted for purposes like these (*o*). Pews cannot be treated like villas.

317. Faculties were certainly granted in former times with too great facility, and by no means with due consideration and foresight (*p*). Faculties formerly granted too readily.

318. The experience of the mischief which has resulted from a too lavish grant of faculties in former times and the Change of times not to be overlooked.

(*m*) *Byerley v. Windus*, 5 *B. & C.* p. 20.

(*n*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 314.

(*o*) *Ibid.* p. 321.

(*p*) *Fuller v. Lane*, 2 *Add.* p. 426.

CAP. I.
FACULTY.

Espe-
cial re-
gard given to
accommoda-
tion for the
poor.

They might be
driven to
dissent.

Faculty effect-
ing a reduction
in free seats
vicious.

Strong case
required to
induce any
faculty now.

And very
singular
circumstances.

want of church room generally, and the propriety of affording additional sittings, especially to the poor, are strong features of the times; and they are not to be overlooked by ordinaries when application is made for a faculty (*s*).

319. And every possible reason exists, why no concessions should be made, at all likely to infringe upon the due accommodation of the poor in their several parish churches. It is to be presumed that they are the persons most in want of religious instruction, and their title, as such, in particular, to receive it, is expressly recognized by the Divine Founder of Christianity itself (*s*).

320. If disabled from receiving it from want of room in their parish churches, they are almost driven to seek it in places of dissenting worship, a circumstance exceedingly to be deplored; although of course they are clearly entitled, and should be freely allowed, to resort to such places of worship if they prefer it; provided they are really dissenters in opinion, from the doctrine or discipline of the Church (*s*).

321. A faculty for appropriating a seat to a messuage by taking down two pews where the poor were accommodated is, at least *primâ facie*, unusual and vicious. All the pews are for the accommodation of the whole parish (*t*).

322. A strong case should therefore be made out to induce the ordinary, in the exercise of a sound discretion, to appropriate any pew, by faculty, to a particular parishioner and his family, at the present day (*u*).

323. In 1829 the court said that, considering the increased population of the country, a parish must be very

(*s*) Fuller v. Lane, 2 *Add.* p. 428.

(*t*) Butt v. Jones, 2 *Hagg.* p. 424.

(*u*) Fuller v. Lane, 2 *Add.* p. 431.

singularly circumstanced to induce, and justify, a faculty of any sort for a pew, so as to preclude the parish from improving the church accommodation, particularly for the lower classes (*x*).

CAP. I.
FACULTY.

324. True it may be that, at the particular time when the faculty is applied for, its issue may not be generally inconvenient; the parishioners at large may be sufficiently accommodated, after and notwithstanding its issue. But in this even, the most favourable case, there are obvious reasons for inducing the ordinary to entertain such applications with a good deal of reserve (*y*).

Objectionable even though not inconvenient at the moment.

325. For instance, additional room may be soon, or at some time, wanted, suggesting the propriety of new arrangements in the church; but such future arrangements may be formidably obstructed, by the actual issue of the faculty then prayed (*y*).

But may become so.

326. Ordinaries are not, at this day, to tie up their hands against such future arrangements as the rapidly increasing population of the country may soon render necessary or convenient, in order best to provide for the general accommodation of their several parishes, by a too lavish issue of faculties, or by the issue of a faculty at all, but under special circumstances (*z*). (This was said by the court in 1825.)

Repeated caution enjoined.

327. The court eventually went further and said that ordinaries, at the present day, are bound not to issue faculties, appropriating pews to individuals, but under *special* circumstances (*z*).

Now only granted under special circumstances.

328. The result, upon the whole, of these faculties, is, that in many churches the parishioners at large are de-

By such faculties parishioners

(*x*) *Butt v. Jones*, 2 *Hagg.* p. 424.

(*y*) *Fuller v. Lane*, 2 *Add.* p. 431.

(*z*) *Woollocombe v. Ouldrige*, 3 *Add.* p. 4.

CAP. I.
FACULTY.

at large often
deprived of
their rights.

Convenience of
parishioners
the chief
object.

Considerations
for court upon
an application
for faculty.

Whether pre-
judicial to pa-
rish at large?

Whether af-
fecting rights
of individuals?

Whether appli-
cant qualified?

The proportion
of sittings to
population.

prived, in a great degree, of suitable accommodation, by means of exclusive rights to pews, either *actually* vested in particular families by faculty or prescription, or at least, which is the same thing as to any practical result, *supposed to be* so vested (*d*).

329. The leading object of the court in granting faculties is the convenience of the parishioners (*e*).

330. There are various considerations to which the attention of the court should be directed when it receives an application for a faculty to an individual:—

331. 1st. Whether the appropriation would be prejudicial to the church or the parish generally? In which case, though the minister and churchwardens are the most proper persons to show cause, yet any other parishioner may oppose and show cause, if he thinks fit, because he has a general interest (*f*).

332. 2ndly. Whether it would affect the rights of any particular persons? In which case, only the persons who would be injured, or at least the churchwardens as guardians of the parochial rights of every parishioner, ought to oppose it (*f*), and no other parishioner who would not be personally affected.

333. 3rdly. Whether the person who sued for the faculty was fitly qualified to have such a grant (*f*).

334. What is the population of the parish in proportion to the number of sittings in the church? whether it is an increasing or a diminishing population? are necessary inquiries previous to any grant of a faculty for the appropriation of pews to particular persons. They are most necessary, and the result ought to be most satisfactorily in

(*d*) Fuller v. Lane, 2 *Add.* p. 428.

(*e*) Sharpe v. Hansard, 3 *Hagg.* p. 337.

(*f*) Partington v. Rect. of Barnes, 2 *Lee*, p. 345.

favour of such applicants, to insure the success of their applications (*g*).

CAP. I.
FACULTY.

335. The size of the pew, also, and the proportion of the number of sittings in the pew to that of the applicant's family, are also to be taken into account (*h*).

Proportion of
pew to family.

336. The question whether any obstruction or inconvenience would be caused, is one which would come under the first head of inquiry (*i*).

Whether any
obstruction;

337. Whether any obstruction of light would be caused is another point for the consideration of the court (*k*).

or obstruction
of light;

338. The court should be careful to preserve the symmetry and proportions of the church inviolate (*k*).

or injury to
appearance of
church.

339. The fact that seats held under a faculty may be temporarily disturbed in an enlargement of a church furnishes no ground for opposition to the grant of a faculty for such enlargement (*l*).

Temporary
disturbance no
bar.

340. Ordinaries should be careful not to afford the applicants too great a proportion of room, or accommodation exceeding their real (actual and probable) wants to the exclusion of other parishioners; for *that* would be justifiable under no circumstances (*m*).

Parishioners
must not be
excluded.

341. The vestry granted to a man (in consideration of a money payment) a pew appropriated to his house which he sold to another, who thereupon applied for a faculty; but the court refused it and ordered him to be placed in the common part of the church (*n*).

Possession
originating in
payment is
ground for
refusing a
faculty.

342. In a case in the year 1825 the court would not say that no possible case for the issue of such a faculty might

Benefaction
might possibly
give moral
claim for
faculty.

(*g*) *Fuller v. Lane*, 2 *Add.* p. 432.

(*h*) *Ibid.* p. 433.

(*i*) *Tattersall v. Knight*, 1 *Phill.* p. 233.

(*k*) *Groves & Wright v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 195.

(*l*) *Harrison v. Swayne & S.*, unpub.

(*m*) *Fuller v. Lane*, 2 *Add.* p. 436.

(*n*) *Harford v. Jones*, *Consist.* 1724, cited in 2 *Hagg. C. R.* p. 318, n.

**CAP. I.
FACULTY.**

arise, as to a benefactor contributing liberally to the enlargement of the church or the accommodation, especially of free seats for the poor, but even then it must be fettered with all due restrictions and limitations (*m*).

Such faculties probably not granted in future.

343. But from what has been laid down in subsequent cases, it is not probable that even this limited favour would in future be accorded.

Pew rights under faculties to be duly considered.

344. In granting a faculty for the enlargement of the church, the court will take care that the rights of persons, claiming a pew under a faculty, are secured, although they do not appear to the usual citation of parishioners (*n*).

Court must take care not to exceed its authority.

345. The court must take care that it does not exceed its authority, well observing where no legal rights interpose and where such rights and objections do interpose. If a faculty were granted and it should turn out that there was already a prescriptive right, the faculty would (so far at least) be void, and the person having such a right would be entitled, if his pew were removed or altered under the supposed authority of such faculty, to have it reinstated (*o*).

Possessory right gives standing to oppose faculty.

346. A pew alleged to have been bought twenty-five years previously and enjoyed since, gave a possessory right sufficient to defeat an application for the grant of a faculty of the same seat to another, but did not give an absolute right (*p*). (Delegates, 1756.)

Faculty cannot be granted in a suit to defendant.

347. The decree for a faculty made in favour of one who had only appeared as a defendant to oppose a faculty being granted to another, was reversed by the Arches Court (*q*).

(*m*) *Fuller v. Lane*, 2 *Add.* p. 436.

(*n*) *Harrison v. Swayne & S.*, unpub.

(*o*) *Knapp & ors. v. Nicholl*, 2 *Roberts*. p. 364; *Archer v. Sweetman*, *Fort.* p. 346.

(*p*) *Dearle v. Southwell*, 2 *Lee*, p. 260.

(*q*) *Ibid.*

348. Whether any parishioner, not specially damnified, has a right to oppose the grant of a faculty to another parishioner is not settled.

CAP. I.
FACULTY.

Doubt if one not damnified can oppose.

Early faculties in various forms.

349. Faculties have been granted in various forms. There are some instances of faculties *at large*, that is, appropriating pews to persons, and their families, without any condition annexed, of residence in the parish (r).

350. The appropriation of a pew has sometimes been to a man and his family, "*so long as they continue inhabitants of a certain house in a parish*:" and Sir John Nicholl said, that this is perhaps the least exceptionable form, as it is unlikely that a family continuing in the occupation of the same house in the parish, shall be in circumstances to render its occupation of the same pew in the church very objectionable (s).

Sometimes during inhabitancy of a certain house.

351. Buller, J. (K. B.), stated that he had seen a faculty for exchanging seats in a church; under which, after stating that A., in right of a particular house in a parish, had immemorially a right to a certain pew in the church, the ordinary gave his consent to exchange it for another, but still each was annexed to the house (t): but the validity of such a faculty seems never to have been tried, nor does any other example appear to be known.

For exchanging seats.

352. The more modern form was, to a man and his family, "*so long as they continue inhabitants of the parish*" generally. Still this class of faculties is objectionable, inasmuch as they often entitle parishioners to the *exclusive* occupancy of a pew, of which they, themselves, are no longer in circumstances to be *suitable* occupants at all, whatever their ancestors might have been (u).

While inhabitants of the parish.

(r) Fuller v. Lane, 2 *Add.* p. 427.

(s) *Ibid.* p. 426.

(t) Stocks v. Booth, 1 *T. R.* p. 431.

(u) Fuller v. Lane, 2 *Add.* p. 426.

CAP. I.
FACULTY.

Should be while inhabitants of parish; or of parish and of a certain house.

353. So Sir John Nicholl said it was very desirable that after due time has been given as encouragement to those who build them, the seats should return to the disposition of the ordinary. The form of the grant should be, "So long as they continue inhabitants of the parish," or, "So long as they continue inhabitants of the parish, and occupiers of the messuages stated;" the former of these is the more usual, as it gives no notion of annexing to houses (*x*).

At their expiration parish rights revive.

354. Because, on the expiration of a faculty limited to a certain period, the right of the parishioners to the pews, the subject-matter of such faculty, revives (*y*).

Ordinary must use a sound discretion in granting a faculty, and is subject to appeal.

355. Though the discretion exercisable by the ordinary be of the widest nature, yet it must be a sound discretion having a due regard to times and circumstances and to the rights and interests of all parties concerned: if an unsound discretion be exercised, a party may appeal to a superior tribunal (*z*).

Not a matter for prohibition.

356. It is a matter for appeal, and the Court of Queen's Bench cannot interfere by prohibition; even where the faculty applied for is of a mixed nature, that court will presume that the faculty will be limited to legal objects (*a*).

Faculty upon union of city churches.

357. By the Act for Union of City Churches (*b*) the bishop may grant a faculty to alter and re-adjust the seats in the church of the united parish and the appropriation thereof, so that at least half be unappropriated, and the remainder shall be at the disposal of the churchwardens, under the bishop, discharged from all prescriptive and

(*x*) *Tattersall v. Knight*, 1 *Phill.* p. 237.

(*y*) *Blake v. Osborne*, 3 *Hagg.* p. 733.

(*z*) *Butt v. Jones*, 2 *Hagg.* p. 424.

(*a*) *Hallack v. Univ. of Cambridge*, *Ad. & E., N. S.*, 1 *Q. B.* p. 614.

(*b*) 23 & 24 *Vict. c.* 142, s. 28.

other pre-existing rights: this, of course, includes rights under faculties.

**CAP. I.
FACULTY.**

358. As a general rule a faculty, once granted, is good and valid against the ordinary himself, and irrevocable (c). If the doubts suggested (as previously mentioned) as to the power of granting such faculties at all be well founded, the (supposed) grants would be, not revocable, but simply invalid.

A faculty is irrevocable if rightly granted.

359. A faculty (for annexing a pew to a house or messuage), obtained by surprise and undue contrivance, may be revoked (d).

Revocable if obtained by surprise.

360. The existence of claims to the exclusive enjoyment of pews in the body of the church by faculty or prescription has of late years produced injurious consequences, especially in parishes where there has been a large increase of population (and rural parishes are now, therefore, almost the only exceptions). Sometimes these exclusive rights prevent an arrangement of the church room, the most beneficial for the general accommodation. In some instances these pews remain unoccupied, either from the decay of the houses to which they were originally annexed, or from other circumstances (e).

General objections to such faculties.

361. It will also be readily understood that rights at first claimed under the authority of a faculty in process of time merge into the permanence of a prescription. The householder enjoying such a right is naturally a person occupying a leading position and possessing a great influence in the parish, and consequently very little likely to have his title questioned; and thus by mere efflux of time he or his family acquire such a title as neither the

Rights by faculty often merge into prescription.

(c) *Fuller v. Lane*, 2 *Add.* p. 431; see also *Knapp & others v. Nicholl*, 2 *Roberts. Ecol. Rep.* p. 364.

(d) *Butt v. Jones*, 2 *Hagg.* p. 426.

(e) *Report on Ecol. Courts*, 1832, 12mo. ed. p. 131.

**CAP. I.
FACULTY.**

parish nor ordinary can question, though the former are so far deprived of their ancient rights and the latter of his jurisdiction.

Modern faculties carefully recorded.

362. The injury is more serious, if the decision be supported that non-parishioners may prescribe for seats; but, on the other hand, since the records which include the grant of faculties are now very carefully kept and easily accessible, there is less fear in future of the lapse of rights by faculty into rights by prescription.

Interfere with the churchwardens.

363. The duties of churchwardens in seating and arranging the parishioners are too frequently interfered with by *faculties* appropriating certain pews to certain individuals, in different forms and with different limitations; as also by prescriptive rights to pews, which these faculties are supposed to have occasioned (*h*).

Claims often supposititious.

364. In very many instances these exclusive rights are merely supposititious, and would turn out, upon investigation, to be no rights at all (*i*).

Recommendations of ecclesiastical commissioners.

365. The importance of the subject elicited the following recommendations from the commission.

There be no future grant.

1st. That in future no faculties shall be granted permanently annexing to any messuage a pew in the church or chancel (*j*):

Present claims to be investigated by a commission.

366. 2nd. That a commission shall issue in each diocese, directed to the archdeacon or archdeacons, or one or more of the rural deans, requiring them, in conjunction with two other individuals, to make a full investigation as to the pews and seats claimed to be held in each parish church or chapel by faculty or prescription; that where such claims shall be established to the satisfaction of the com-

(*h*) Fuller v. Lane, 2 *Add.* p. 426; *Report on Ecol. Courts*, p. 131.

(*i*) Fuller v. Lane, 2 *Add.* p. 427; Pettman v. Bridger, 1 *Phill.* p. 325.

(*j*) *Rep. of Ecol. Com.* p. 132.

missioners, a record of the same, to be kept in the registry of the diocese, should be made (*k*).

CAP. I.
FACULTY.

367. The commissioners thought it extremely desirable that all claims, where no faculty or legal prescription exists, should be finally extinguished; but they felt considerable difficulty in suggesting measures to effect that end. When persons claiming such rights decline to come forward before the commissioners to establish them, there seems no hardship in precluding them from asserting a title hereafter; but more doubt might be entertained as to the course fit to be pursued where the claim was asserted but rejected by the commissioners. Expense is so material a consideration in these matters, that they did not feel justified in recommending any mode of trial which would subject the parties to any legal costs. To invest the commissioners with full power finally to determine all these objections would be the course most effectual for their speedy decision (*k*).

All improved
claims to be
extinguished.

368. This recommendation has been to a certain extent adopted in respect to newly built churches, in an act of parliament passed in 1845 (*l*), which directs that, upon the substitution of a new church for an old one and the transfer thereon of parochial rights, the bishop on his own motion, or at the instance of any person claiming a seat by prescription or faculty, shall issue a commission to the archdeacon and two incumbents and two laymen, who shall examine into all such claims and report to the bishop, who, if satisfied, is to assign seats to those whose claims are proved; and it may be presumed that those who do not make and prove their claims are shut out for the future from such exclusive rights.

Commis-
sioners' recom-
mendation
since adopted
on substitution
of new for old
church.

369. Also by the same Act the same principle is applied

And on trans-
fer from catho-
dral of parish
rights.

(*k*) *Rep. of Eocl. Com.* p. 132.

(*l*) 8 & 9 Vict. c. 70, s. 1.

**CAP. I.
FACULTY.**

Rights abandoned by leaving parish.

Modern faculty to prevent appropriation.

where any part of a cathedral has been accustomed to be used as a parochial church, and the rights thereof are transferred to any new church in the parish (*k*).

370. If a man quits his house and leaves the parish, his right to a seat, whatever was the nature or origin of that right, is at an end, because he has ceased to be a parishioner (*l*). (This, however, was said, apparently, without reference to rights by prescription.)

371. The power of the bishop in the grant of faculties has lately been applied to the purpose of non-appropriation, being an object precisely the reverse of that for which such power had previously been exercised. Upon the petition of the vicar and churchwardens, supported by the vestry, a faculty was granted by the bishop (Lichfield) authorizing certain works proposed to be done by voluntary contributions, and decreeing that all the sittings in the church should be wholly free and unappropriated (*m*).

(*k*) 8 & 9 Vict. c. 70, s. 4.

(*l*) *Byerley v. Windus*, 5 B. & C. p. 18.

(*m*) *Ex inform. Reg.*

PART B.

PARISH CHURCHES AND CHAPELS OF EASE.

DIVISION c.

PRIVATE SEATS.

CHAPTER II.

PRESCRIPTION.

CAP. II.
PRESCRIPTION.

372. PRESCRIPTION is the highest kind of title; it cannot be altered by any authority (a). Prescription is highest title.

373. Prescription is thus defined by an early writer:—

Prescription est quant un person claime ascun chose, pur ceo que il, ses ancestors, ou predecessors, ou ceux que estate il ad, ont ew ou use ascun chose dont nul memorie curt al contrarie.

Prescription is when a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used anything all the time, whereof no mind is to the contrarie (b). Definition of prescription.

374. And by another author, thus:—

Præscriptio est jus quoddam, ex tempore congruens, autoritate legum vim capiens, poenam negligentibus inferens, et finem litibus imponens. Quod non in totum a naturali jure recedit, nec per omnia ei servit. Quemadmodum enim natura æquum est, neminem debere locuple-

(a) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 195.

(b) *Exp. of Terms of Lane*, p. 149 (A.D. 1615).

CAP. II.
PRESCRIPTION.

Prescription by
personal right
or *que estate*.

tari cum alterius jactura: ita naturali rationi congruum est, et negligentibus poenam inferri, et finem litibus imponi (c).

375. Prescription is of two sorts, either a personal right which has been exercised by a man and his ancestors, or a right attached to the ownership of a particular estate and only exercisable by those who are seised of the estate. The first is termed a prescription in the person; the second is called a prescription in *que estate*, which, in plain English, means a right or privilege claimed by prescription as annexed to and going along with particular lands (d).

Prescription
differs from
custom. Possession and
time are essential.

376. Prescription appears to differ from custom in being a personal right rather than the right of a class or general right. But to both of these "two things are incident and inseparable, viz. possession or usage, and time. Possession must have three qualities; it must be long, continual and peaceable—*Longa, continua et pacifica*; for it is said, *Transferuntur dominia sine titulo et traditione, per usucaptionem; s. per longam, continuam et pacificam possessionem*" (e).

Founding
churches
analogous to
highway.

377. Cases of founding churches are analogous to those of the dedication of a highway. It is very seldom that a grant of the soil on which the church is built can be found, but acquiescence in consecration renders the case analogous to a dedication, and the soil afterwards is vested in the ordinary, or in the rector as trustee for the benefit of the parishioners (f).

Resembles an
easement.

378. And as regards pews it appears to be more in the nature of an easement. There is strong reason for think-

(c) *Reformatio Legum Eccles.*, ed. 1641, p. 246.

(d) *Shelford On Real Property*, p. 80.

(e) *Coke upon Lit.*, Book II., sect. 170.

(f) *Chapman v. Jones, L. R.*, 4 *Ex.* p. 282.

ing, that an action on the case is maintainable only on the ground of the pew being annexed to a house as an easement, because an action *on the case* is the proper form of remedy for the disturbance of the enjoyment of any easement annexed to land, as in the case of a right of way or a stream of water (*g*).

CAP. II.
PRESCRIPTION.

379. An easement is defined to be a right of accommodation on another's land, as distinguished from one which is directly profitable (*h*). Definition of an easement.

380. In no case, however, has a person a right to the possession of a pew, analogous to the right which he has to his house or land; for *trespass* would lie for an injury to the latter, but for an intrusion into the former, the remedy undoubtedly is by an action *on the case* (*i*). The right of possession.

381. The right of sitting in an allotted space of the church has been compared to a right of common of pasture, which may be apportioned. For instance, if a person seised of a messuage and forty acres of land, having a prescriptive right of common on a waste for all commonable cattle, *levant* and *couchant* upon the messuage and forty acres, as to the said messuage and forty acres appertaining, make a feoffment to another of five acres of that land, the common is severable, because the prescription to have common on the land, extends to the whole and every parcel. Thus in a case where by faculty a pew had been granted to A. B. and his family for ever, and the occupiers of the messuage, it was held, that the right to use the pew was attached to the occupier of every part and parcel of that messuage (*k*). Compared to right of common.

382. Oughton mentions it thus:—"In divers parts of Oughton's opinion referring to lords.

(*g*) *Mainwaring v. Giles*, 5 B. & A. p. 361.

(*h*) *Burton On Real Property*, Chap. VI., sect. 8, art. 1165.

(*i*) *Mainwaring v. Giles*, 5 B. & A. p. 361.

(*k*) *Harris v. Drewe*, 2 B. & Adol. p. 168.

**CAP. II.
PRESCRIPTION.**

the kingdom, more especially in Wales, particular seats in churches, or rather the right of sitting and hearing divine service in particular seats, belongs, and hath of old, beyond the memory of man, belonged to certain individuals, lords or others, proprietors of dwelling-houses within the parish, so that no other persons have any right to sit in the said seats or disturb such ancient occupiers" (a). This evidently refers to the privilege granted from very early times to the patron or other great person of the parish and not to others.

Doubts as to faculty apply strongly to prescriptive claims.

383. The doubts which have been heretofore expressed as to the validity of the grant of exclusive right under a faculty to seats in other than a chapel or aisle, apply even more strongly to a like claim by prescription, and the wrong done to the parishioners at large is by so much the more serious.

Prescription could thus have no legal beginning.

384. If the ordinary has not such power of granting by faculty the exclusive use of a seat, it is difficult to see how a prescriptive right to a seat, as belonging to a house, can have any just commencement. Because, if there be no means by which a title to a seat can have a legal beginning, it seems strange that prescription should be admitted as evidence, of that which never could have a legal beginning or being,—namely, a legal title (b).

And there is no competent grantor.

385. For where a person cannot make a grant, no valid grant will be presumed. And it was held, before the passing of the Prescription Act (c), that no right of light could be gained by windows, which for upwards of twenty years had looked upon glebe land, because in such a case no valid grant of an easement could be presumed, as the

(a) *Oughton*, tit. XVII., sect. 48: Law's ed., 1844, p. 50.

(b) *Watson*, p. 385.

(c) *Prescription Act*, 2 & 3 Will. IV. c. 71.

rector, being merely tenant for life, never could have had the power to make such a grant (*d*).

CAP. II.
PRESCRIPTION.

386. It appears, therefore, most consonant with reason, that a person should not prescribe to have a seat in the common part of the church, as peculiar to his house, and that the temporal courts ought not to meddle with the deciding of controversies about such seats, but only the ordinary, who ought to place the inhabitants of each parish within his jurisdiction, according to his discretion (*e*).

Prescription
therefore
appears un-
reasonable.

387. Titles by prescription to pews are not mentioned in the old books; neither is the ordinary's power to give titles, upon which such prescriptions are founded. And Watson is of opinion that the ordinary never had such power, and that such prescriptions are, therefore, unreasonable (*f*).

Prescription
for seats is not
mentioned in
old books.

388. It has been said, that although prescriptions resemble the river Nile, in this respect, that no one can trace their origin, and so no direct reason can be given for them, as they were before the memory of man, yet some probable reason, sufficient to make the prescription reasonable, ought to be given (*g*).

Though origin
be unknown,
some probable
reason should
be shown.

389. Whenever, therefore, there is no proof of a faculty, there may be proof of prescription, founded on such immemorial usage as presumes the grant of a faculty, for the appropriation of a pew to a certain messuage or house (*h*).

A faculty is
therefore pre-
sumed.

390. But where the records of the ordinary's court extend back to the middle of the sixteenth century, being a date previous to the granting of any such faculties, and

Faculties re-
corded in
bishop's re-
gistry.

(*d*) *Baker v. Richardson*, 4 *B. & A.* p. 579.

(*e*) *Watson*, p. 385.

(*f*) *Ibid.* p. 384.

(*g*) *Buxton v. Bateman*, *Siderf.* p. 208.

(*h*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

CAP. II.
PRESCRIPTION.

the records be found to contain no entry of the grant of faculty for the seat in question, situated in the body of the church, then any claim by prescription for such seat must fail.

Term to be used, if relied on.

391. It is inconvenient not to use the legal term *prescription*, where it is intended to be relied on as a fact (*e*).

Founded on immemorial usage.

392. The only foundation for prescriptive claim to seats is immemorial usage (*f*): and consequently no prescriptive title can be maintained where its origin is known (*g*).

Against common right.

393. In a case (not, of course, referring to church seats, for no such subject for litigation had then arisen), decided in the year 1304, the court said:—

“ Since you affirm your estate by a custom, which custom is against common right, and which custom began by a tort, it is necessary, if you wish to prove your estate by that custom, that you should maintain it by long continuance of time” (*h*).

110 years' use insufficient.

394. Even 110 years has been held insufficient (*i*).

100 years sufficient.

395. But, in another case, where possession for 100 years and upwards was admitted, the court held that it was needless to look to the evidence of use and possession (*k*).

None in church built in 1663.

396. In a church built in 1663, there could be no right by prescription (*l*).

Impossible in a modern church.

397. Consequently in a modern church, arranged under the authority of a local act of parliament, there can be no prescriptive title (*m*).

(*e*) *Knapp & others v. Nicholl*, 2 *Roberts. Eccl. R.* p. 365.

(*f*) *Fuller v. Lane*, 2 *Add.* p. 432; *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*g*) *Blake v. Usborne*, 3 *Hagg.* p. 733; *Co. upon Littleton*, Bk. II. s. 170.

(*h*) *Year Book*, 32nd Ed. I.: ed. by Record Commission, p. 264.

(*i*) *Fuller v. Lane*, 2 *Add.* 432.

(*k*) *Knapp & others v. Nicholl*, *Roberts. Eccl. Rep.* p. 367.

(*l*) *Londonderry Cathedral*, 8 *Law Times Rep.* p. 863.

(*m*) *Spry v. Flood*, 2 *Curt.* p. 358.

398. Possession for thirty-six years was held to be presumptive evidence of a prescriptive right in a case where the church had been rebuilt about forty years (*n*). (The case was against an intruder, not against the churchwardens or ordinary.)

CAP. II.
PRESCRIPTION.

Presumption in church rebuilt.

399. The ordinary time to which the proof of an ecclesiastical prescription is necessary is, however, very limited, provided the origin be unknown; thirty years constitutes a prescription, and it is not necessary to go further back with evidence of repair (*o*).

Ordinary presumption on thirty years.

400. A prescriptive title, when proved, cannot be altered by any authority. It is, therefore, the highest and best title which a man can have, as it is held to exclude the ordinary (*p*).

Prescription excludes the ordinary.

401. A prescriptive right must be clearly proved—the facts must not be left equivocal; and they must be such as are not inconsistent with the general right (*q*).

Must be clearly proved.

402. In the tenth year of the reign of James I., it was held, by Lord Coke and the other justices, in the case of *Pym v. Gorwyn* (*r*), that a person cannot prescribe for a seat in the body of a church.

One cannot prescribe for seat in body of church.

403. And in the following year, on a prohibition to the Ecclesiastical Court being sued for, upon surmise of a title by prescription, to a seat in the common part of the church, Lord Coke and the other justices answered, that for the title they were not there to meddle with it, this being for a seat in the church; Justice Houghton remarking that the disposition of pews in the church belongs of right to the order and discretion of the ordinary (*s*).

Common law would not meddle with such claim.

(*n*) *Rogers v. Brooks*, 1 *T. R.* p. 431.

(*o*) *Knapp & others v. Nicholl*, *Roberts. Ecol. Rep.* p. 367.

(*p*) *Groves v. Rect. of Hornsey*, 1 *Hagg. C. R.* p. 195; *Fuller v. Lane*, 2 *Add.* p. 425.

(*q*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*r*) *Pym v. Gorwyn*, *Moor*, p. 878.

(*s*) *May v. Gilbert*, 2 *Bulst.* p. 151.

CAP. II.
PRESCRIPTION.

But left it to
the ordinary.

404. Justice Dodderidge also mentioned a case which he had moved in the Court of Common Pleas, where an action had been brought for the disturbance of a seat in the church, and where he had cited Hall's case, and the case of the gravestone and coat armour, for the taking of which an action of *trespass* was held to lie at common law, and had argued that for the same reason an action of *trespass* should lie for such a disturbance in a seat in the church. But the judges all said that they would not meddle with deciding such controversies for seats in the church, but would leave the same to them to whom it more properly belonged (n).

Even when
relating to an
entire aisle.

405. And though an aisle is evidently subject to different considerations they still declined to interfere. Justice Croke said, that in Hall's case a man built an entire aisle in the church, and was at continual charge to repair it; and that it had been held that he had his remedy at common law for a disturbance. But the judges all said, "We are not here to meddle with seats in the church" (n).

Titles by pre-
scription are
not ancient, in
Watson's
opinion.

406. Watson says:—"To speak my own thoughts, I conceive that the *ordinary had anciently the power* of placing the parishioners in such seats at least as are set *in that part of the church repaired by the parishioners* according to 8 Hen. VII. c. 12, and that *prescriptions* to have seats as belonging to houses, and the ordinaries' power to give titles (which are the rise of such prescriptions), are but *lately talked of*; for I cannot find *in the old books any mention of such titles* by prescription, or power of the ordinary. And it seems to me that the ordinary hath no such power, and that such prescriptions are not reasonable" (o).

(n) May v. Gilbert, 2 *Bulst.* p. 151; Hall v. Ellis, *Noy*, p. 133.

(o) *Watson*, p. 384.

CAP. II.
PRESCRIPTION.

407. If the lord of the manor, or any other gentleman of the parish having an estate and an ancient house or messuage therein, has immemorially, he and his ancestors, sat in an aisle of the church, buried their dead there and always repaired it, he may prescribe for it; and cannot be dispossessed of it either by the churchwardens, the clergyman, or the ordinary, and if disturbed he has his remedy. For such immemorial possession will carry with it a presumption that the aisle was first built by the founder, with the consent of the clergyman, patron, and ordinary (*p*).

Prescription for an aisle easy. Presumably built by founder of church, or other.

408. There is no doubt that if the proprietor, or patron himself, has used to dispose of and order the seats by placing persons therein, in such case the ordinary cannot displace them (*q*).

Ordinary cannot interfere.

409. The circumstance that the freehold of a chapel or chancel adjoining or forming part of the church may be in the rector of the parish does not annul the right of a person to its exclusive use, if built and repaired by him and his ancestors from time immemorial, and a place of burial and for hearing divine service (*r*).

If freehold be in rector, it makes no difference.

410. Ayliffe follows thus (based upon Coke's Rep.):—"But if an inhabitant and his ancestors have used time out of mind to repair an isle in the church proper and peculiar to his house, and has been wont to sit there with his domesticks in order to hear divine service, and been likewise accustomed to bury therein, this makes this isle so peculiar to himself and his household, that he cannot be displac'd by the ordinary himself" (*s*), much less can he be interrupted by the parson or churchwardens.

Opinion otherwise as respects an aisle, in Ayliffe's opinion.

(*p*) *Corven v. Pym*, 12 *Co.* p. 105; 3 *Inst.* p. 202, citing above; less strongly, *Godb.* p. 199; *Moor.* p. 878; *Bunton v. Bateman*, 1 *Lev.* p. 71.

(*q*) *Buzzard's case*, 2 *Rolle's Abr.* p. 288.

(*r*) *Churton v. Frewen*, *L. R.*, 2 *Eq.* p. 658.

(*s*) *Ayliffe's Parer.* p. 485, citing 12 *Co. Rep.*, p. 104.

CAP. II.
PRESCRIPTION.
TION.

Distinction between chapel or aisle and body of church. Presumptions different.

411. Here then is presented a very wide distinction between a claim in respect to a chapel or aisle and a claim in respect to a seat in the body of the church. It is reasonable to suppose that if a person who builds a chapel or aisle as an addition to the church and for the convenience of himself and his descendants, he and they should possess an exclusive right of user therein (*r*). But that the founder of a church should retain to himself and his descendants a portion of the body of the church, though possible, is not a reasonable thing to presume, and perhaps no single example has ever been proved; and as the use of the body of the church is in the parishioners in common, there is a strong presumption against any exclusive claims until definitely proved. It is therefore more difficult to prove a right by prescription to a pew in the body of the church than to a pew in the chancel or in an aisle.

Presumption against prescription as respects body of church.

412. As a prescription is founded upon a faculty for a seat in the body of the church presumed to have existed, one would anticipate that such faculty, being in derogation of public right, the presumption respecting it would be of the most limited nature *stricti juris*. It, however, seems, on the contrary, to have been viewed in the most favoured light: the ground for this is difficult to imagine.

The Prescription Act.

413. By the Prescription Act, when any right of way or other easement shall have been enjoyed, by any person claiming right to it, without interruption for twenty years, the claim thereto shall not be defeated by showing that it was first enjoyed at any time prior to such period (though it may be defeated in any other way by which it was liable to be defeated before the act); and when the right shall have been so enjoyed for forty years, it shall be deemed absolute and indefeasible, unless it shall appear that it was

(*r*) *Chapman v. Jones, L. R., 4 Ex. p. 281.*

enjoyed by an express consent or agreement, made or given, by deed or writing (*s*).

CAP. II.
PRESCRIPTION.
TION.

414. The question then arises whether, upon the construction of this act, a prescriptive right to a pew is such an easement as may be established on a possessory title of forty years' user by the occupier of a house, all necessary repairs having been done by him; and, consequently, whether the law will presume that such possessory title is founded on a faculty, when it may be well known that no such faculty was ever in existence.

Whether Prescription Act affects pews.

415. Whether the Prescription Act applies to pews is a question which has not yet been tried; but, though the subject is not entirely free from doubt, it is believed that the act does not so apply. Such seemed to be the opinion of Dr. Lushington, when at the bar, in a case laid before him to advise upon (*t*).

Dr. Lushington's opinion.

416. Questions of prescription are triable in the Queen's Bench by *action on the case* (*u*).

Prescription triable in Queen's Bench.

417. Although the ordinary may have a right to dispose of all vacant seats in the aisle, he cannot intermeddle with a temporal right (*x*).

Ordinary cannot meddle.

418. The common law will not suffer the spiritual courts to try prescriptions, apparently because the time in which such prescriptions or customs may be created is different by the ecclesiastical law from what it is at the common law. The former allows of different times in creating prescriptions and customs, and generally less than that at common law (*y*); and inheritances might be affected

Why common law will not suffer spiritual courts to deal with prescriptions.

(*s*) 2 & 3 Will. IV. c. 71, s. 2.

(*t*) MS. opinion.

(*u*) Palm. p. 424 (A.D. 1619-29); Hutton's case, *Latch.* p. 116; Mainwaring v. Giles, 5 B. & A. p. 361.

(*x*) Swetnam v. Archer, 8 Mod. p. 338.

(*y*) Watson, p. 386.

CAP. II.
PRESCRIPTION.

Only interferes if Spiritual Court is about to try prescription.

And not if prescription be admitted.

Prescription pleaded stops Spiritual Court.

And prohibition will be granted.

A bill in Chancery for quiet possession will not lie.

by adjudging them to be good which by common law are no prescriptions.

419. But where the Spiritual Court has jurisdiction over the subject-matter, it will have jurisdiction equally, whether the claim is founded upon prescription or upon any other right; it is only when the Spiritual Court is proceeding *towards the trial of the prescription* that a claim by prescription furnishes ground for a prohibition (z).

420. If the prescription is admitted, the Spiritual Court may go on with the cause, as a defendant does a modus or pension by prescription; and this was the foundation of the consultation in *Jacob v. Dallow* (a).

421. But when a prescription is pleaded (and not admitted) in the Spiritual Court, it ties up the hands of the ordinary from any further proceeding, for the Spiritual Court cannot try a prescription (b).

422. And, therefore, if a suit be commenced in the Spiritual Court for a seat on account of the prescription, a prohibition will lie for the party sued, because a temporal right is in question,—whether the prescription be good or not, is not for the Spiritual Court to judge (c).

423. A bill will not lie to quiet one in the possession of a pew in a church. Thus, when the plaintiff had obtained a decree before the ordinary for an aisle in a church, in A.D. 1676, and brought his bill for the decree of the Court of Chancery to quiet him in possession, the court dismissed the bill with costs, because, as it never executes its own decrees by a bill, without examining the justice thereof, it could not examine whether the bishop had done

(z) *Byerley v. Windus*, 5 B. & C. p. 21.

(a) *Jacob v. Dallow*, 2 Salk. p. 551, & 2 Ld. Raym. p. 755; *Byerley v. Windus*, 5 B. & C. p. 21.

(b) *Swetnam v. Archer*, 8 Mod. p. 338.

(c) *Witcher v. Cheslom*, 1 Wils. p. 17.

right, and, besides, such a decree could not bind his successors (*d*).

CAP. II.
PRESCRIPTION.

424. Though in a remarkable instance of the case of a bill of peace to quiet parties in rights when established, applying to the Court of Chancery to decide their legal rights, and where both parties were assenting, that court proceeded to hear and decide the questions at issue (*e*).

But Chancery may decide if both parties consent.

425. Though the Ecclesiastical Court cannot try the question of prescription, yet it may proceed till prohibited, for the defect is not in jurisdiction but *in modo triationis* (*f*).

Defect of Eccles. Court not in-jurisdiction, but mode of trial.

426. When once it appears, by the proceedings in the Spiritual Court, that the prescription, instead of being admitted, is disputed, and that the parties are in progress to bring its existence to trial, the courts of common law are not bound to wait till the parties have incurred the expense of *putting it in issue*, but the prohibition is grantable at once; and it was upon this principle that prohibitions were granted in *Darby v. Cosens* (*g*), and in *French v. Trask* (*h*). It could not be permitted to a party to take the chance of a trial below, and, when that was decided against him, to come to the King's Bench and object to such trial.

Prohibition grantable before putting question in issue.

427. Although the leaning of courts was formerly in favour of presumptions, the course now is for judges to direct juries not to presume an instrument, unless under all the circumstances of the case they actually believe that the particular document once existed (*i*).

Courts are no longer in favour of presumptions.

(*d*) *Baker v. Child*, 2 *Vern.* p. 226.

(*e*) *Churton v. Frewen* *L. R.*, 2 *Eq.* p. 657.

(*f*) *Knapp & ors. v. Nicholl*, 2 *Roberts. Ecol. Rep.* p. 366.

(*g*) *Darby v. Cosens*, 1 *T. R.* p. 552.

(*h*) *French v. Trask*, 10 *East*, p. 348; *Byerley v. Windus*, 5 *B. & C.* p. 22.

(*i*) *Morgan v. Curtis*, 3 *Man. & Ry.* p. 391; *Livett v. Wilson*, 3 *Bing.* p. 118, and 10 *B. Moore*, p. 439; *Lopez v. Andrews*, 3 *Man. & Ry.* p. 329, note.

CAP. II.
PRESCRIPTION.

Prescription must be clearly proved.

Difference between a pew in body of church, and a chapel.

Land, though site of a chapel, cannot be appurtenant to other land or a manor.

Different as to pew in body of church.

428. A prescriptive right must be clearly proved; the facts must not be left equivocal, and they must not be such as are not inconsistent with the general right (*k*).

429. There is a wide difference between pews in a parish church (*i.e.* in the body of the church) which are annexed to dwelling-houses in the parish and lesser chancels or chapels. With regard to pews, it appears to be beyond doubt that they must be annexed to a dwelling of some kind or another. But with regard to chapels or lesser chancels, they are on an entirely different footing. They are beyond the jurisdiction of the ordinary, and may be freeholds of inheritance (*l*).

430. Upon no principle of law is it possible to hold that a freehold piece of land, just because a church or chapel may be built on it, can be held as appendant or appurtenant to other land. In a case where a chapel was not even within the manor the court said it was new to contend that land outside a manor, though in the same parish, could be held to be necessarily appurtenant to the manor or necessarily incidental to the inhabitancy of the manor house, and incapable of being enjoyed in any other way (*l*).

431. In the case of a pew in the body of the church, the considerations are totally different; that part being admittedly for the use of all the parishioners in common, there the presumption is naturally adverse to any exclusive rights, and something more than an imaginary faculty should surely be required. This point does not seem hitherto to have been very clearly expressed, though it is settled that a right by prescription to a seat situated in the body of the church is more difficult of proof than if it were situated in an aisle or chancel; and formerly it was even

(*k*) *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*l*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 281.

doubted whether it were possible; in fact, Lord Coke and the other justices so decided in two cases (*m*).

CAP. II.
PRESCRIPTION.

432. On the other hand it was held in the Exchequer, that the distinction between a seat in an aisle and in the body of the church is merely made a doubt or question in some of the books, but there was no case in support of it, and there is no distinction in the reason of the thing itself (*n*). There is a distinction to be drawn between a gallery and an aisle, inasmuch as a gallery is an erection in the church, while an aisle is an addition to the building (*o*).

Elsewhere said that there is no distinction.

433. But there is no doubt that a person owning the freehold of a private chapel can convey it. It cannot be appendant or appurtenant to a manor in which it is not situate, and the owner has a good right to convey his interest in it to another (*p*).

Chapel may be conveyed without, and cannot be appurtenant to a manor.

434. It is not necessary that the house be situate in the parish if the claim be in respect to a seat in an aisle or chapel (*q*). In the case of an aisle, this might be accounted for on the presumption that the soil on which it stands was originally the property of the person who built it. For it was said by Chief Justice Abbott, that a pew in a chancel may be the freehold of an individual (*r*).

House need not be in the parish.

435. It is not necessary that there should be any actual separation between the chapel, the area of which is claimed by prescription, and the body of the church. There are many chapels constituting to the eye, and being in fact,

Chapel need not be separate from rest of church.

(*m*) *Pym v. Gorwyn, Moor*, p. 878; *May v. Gilbert*, 2 *Bulst.* p. 151.

(*n*) *Lousley v. Hayward*, 1 *Y. & J.* p. 586.

(*o*) *Londonderry Cath., Law Tl.*, 8 *N. S.* p. 863.

(*p*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 288.

(*q*) *Davis v. Witts, Forr.* p. 14; *Lousley v. Hayward*, 1 *Y. & J.* p. 586; *Churton v. Frewen*, *L. R.*, 2 *Chanc.* p. 634; *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 281.

(*r*) *Mainwaring v. Giles*, 5 *B. & A.* p. 361.

**CAP. II.
PRESCRIPTION.**

an integral part of a parish church, and attached to the residence of persons who have landed property in the neighbourhood, and they are frequently treated as freeholds of inheritance (*s*).

Rector's seat in chancel.

436. The rector's seat in the chancel, unless it be admitted that he holds it for the purposes of taking part in divine service, is somewhat similar; but though the rector or impropriator is entitled to the chief seat (*t*), no particular part of the chancel has been at any time specified.

Seat in aisle or chapel must appertain to a house.

437. The right, if in respect to a seat other than in an aisle or chapel, must be claimed as appurtenant to a house, and not to land without a house (*u*).

Reason for presuming faculty is necessary.

438. It was said by Lord Stowell that a person claiming a pew must show either a faculty or prescription, which will suppose a faculty. Mere presumption is not sufficient without some evidence on which a faculty may reasonably be presumed (*x*). It is presumed that he was referring to pews in the body of the church.

Elsewhere said that faculty need not be presumed.

439. Referring to a pew in the chancel it was held by the Privy Council, that there is no necessity to travel out of one's way and set up the scarcely tenable presumption, upon which a prescriptive right to a pew is generally said to be based, that the right commenced by a faculty (*y*).

Distinction between aisle and body of church said to be unfounded.

440. It has also been held, that a pew in the *body* of a church may be prescribed for as appurtenant to a house out of the parish, although the origin of the right to the pew cannot be traced. And that the distinction as to such a prescription for a pew in an aisle, but not in the body of the church, is merely made a doubt or question in

(*s*) Chapman *v.* Jones, *L. R.*, 4 *Ex.* p. 281.

(*t*) Hall *v.* Ellis, *Noy*, p. 183.

(*u*) Pettman *v.* Bridger, 1 *Phill.* p. 325.

(*x*) Walter *v.* Gunner & D., 1 *Hagg. C. R.* p. 322.

(*y*) Parker *v.* Leach, *Moore's P. C. Rep.*, 4 *N. S.* p. 201.

some of the books ; but that there is no case in support of it, and no distinction in the reason of the thing itself (*z*).

CAP. II.
PRESCRIPTION.

441. But this doctrine may be doubted, because (as it has almost always been held) a prescription presumes a faculty, and it is probable that no faculty could ever have been made by the ordinary in respect of a house *out* of the parish, as a non-parishioner has no common right to cede in return for the exclusive right which a faculty gives ; therefore, such a prescription must fall to the ground (*a*). It may be argued that the house may originally have been within the ecclesiastical district belonging to the church ; but it must be borne in mind that pews did not exist when the present boundaries of parishes were fixed.

But this doctrine questioned.

442. It was said in the report of a parliamentary committee, that as the body of every parish church belongs of common right to all the parishioners, this right cannot lawfully be defeated by any permanent appropriation of particular places (*b*).

Denied by parliamentary commission.

443. A prescriptive title to a pew in virtue of the ownership of an estate is a legal absurdity ; a pew can only be annexed by prescription to a house, and the occupier of the house for the time being is entitled to the use of the pew, and not the owner of the estate (*c*).

Claim in right of an estate absurd.

444. The tenants of land might be non-parishioners and could support no temporal right (*d*). It is in respect to inhabitancy that a pew is to be used (*e*).

It is in respect to inhabitancy.

(*z*) *Lousley v. Hayward*, 1 *Y. & J.* p. 586 ; 7 *Dowl. & Ry.* p. 564 ; see *Barrow v. Keen*, *Siderf.* p. 361.

(*a*) See *Fuller v. Lane*, 2 *Add.* p. 427 ; *Hallack v. Univ. of Cam.*, 1 *B.* 593.

(*b*) *Rep. of Lords' Committee on Spiritual Destitution* (1858), p. xviii.

(*c*) *Woollocombe v. Ouldridge*, 3 *Add.* p. 6 ; *Byerley v. Windus*, 5 *B. & C.* p. 19.

(*d*) *Pettman v. Bridger*, 1 *Phill.* p. 328.

(*e*) *Gibson's Co.* p. 221 ; *Coke*, *Litt.* p. 121 b. ; *Byerley v. Windus*, 5 *B. & C.* p. 18.

CAP. II.
PRESCRIPTION.

Where messuage not longer existing, prescription fails.

Owner of house cannot restrain occupiers from use of appurtenant pew.

Pew divided if house divided.

Effect of abandonment by one of owners.

Prohibition of bishop granted where wardens claimed independent disposal of seats.

445. In the case of pews claimed as appurtenant by prescription to a messuage or mansion house of an estate which the claimant had purchased, but which messuage is no longer in existence, such claim is bad (*n*).

446. If a seat is appurtenant to a house the owner of the fee cannot restrain his tenant from the use of it, because the seat is for the benefit of the house, namely, for the inhabitants of the house, and not for the benefit of the owner if he cease to inhabit it (*o*).

447. When a right to enjoy a pew is annexed to an old dwelling-house, it may happen that in consequence of such house being sub-divided, three or four families may become entitled to use the pew belonging to the original messuage, and they may require more accommodation. A question may arise how many persons are entitled to use the pew in respect of each of the sub-divisions; but that is a matter to be settled among the respective owners (*p*).

448. There is room to doubt what would be the effect of the abandonment of his right by one of such owners; whether in such case it would revert to the parish, or accrue to the other owners.

449. In the parish of Ludlow the churchwardens, with consent of the parishioners, used to dispose of the seats in the church, and had disposed of certain seats to the bailiffs of Ludlow, which being ruinous, they, by the command of the bailiffs, had pulled down and erected new ones. And as all customs and prescriptions are to be tried at common law, a prohibition of a suit in the bishop's court against the churchwardens for pulling down seats and

(*n*) Byerley v. Windus, 5 B. & C. p. 19.

(*o*) Craig v. Watson, unpub.

(*p*) Harris v. Drewe, 2 B. & Adol. p. 167.

erecting others without a faculty from the bishop was granted (*q*).

CAP. II.
PRESCRIPTION.

450. But it was elsewhere decided that parishioners cannot prescribe to dispose of pews to the exclusion of the ordinary: the churchwardens and the major part of the inhabitants cannot jostle out his authority (*r*).

The reverse held in all other cases.

451. As to the mode of trying such questions of prescription a nice distinction was made, where it was said, that if one claims to have a *seat* in a church he may maintain *trespass* for infringing it; but if he only claims *liberty to sit* there, then he has an action *on the case* (*s*).

Distinction between claim to seat and liberty to sit there.

452. Thus, trespass was held to lie where the pew was in a small chancel or aisle (*quâdam cancellulâ*), belonging to the owner's house; and his ancestors and predecessors, time out of mind, had sat in this chancel to hear Divine Service, and had also repaired and locked it. But the reporter of the case thought, without the repair of the aisle *trespass* would not have laid (*s*).

Where trespass will lie.

453. There are many authorities which show that the heir may maintain an action against the parson, or others, for the removal of a tombstone; so also the owner of a pew for violations of the right to enjoy it. In general that right is conferred by the ordinary, and an action *on the case* is the remedy for a mere obstruction (*t*). Therefore an action *on the case*, and not *trespass*, is the proper remedy for the obstruction or disturbance of a pew appurtenant to a house (*u*).

Action on case for obstruction: and not trespass.

454. An action of trespass will not lie for entering into a pew, because the plaintiff has not the exclusive

Claimant has not exclusive possession.

(*q*) *Colebach v. Baldwyn*, 2 *Lutw.* p. 1032.

(*r*) *Presgrave v. Churchw. of Shrewsbury*, 1 *Salk.* p. 166; *Langley v. Chute*, *Sir T. Raym.* p. 246.

(*s*) *Dawtree v. Dee*, *Palm.* p. 46.

(*t*) *Spooner v. Brewster*, 3 *Bingh.* p. 138; *Co. Litt.* p. 18 b.

(*u*) *Devonshire's case*, 36 *Eliz.*, cited in *Dawtree v. Dee*, *Palm.* p. 46.

CAP. II.
PRESCRIPTION.

- possession, the possession of the church being in the parson. The word possession must always be understood *secundum subjectam materiam* (*u*).
- Evidence.** 455. In proving a claim by prescription, there is a great difference whether the claim is sought to be maintained as against a disturber, or against the ordinary (*x*). The ordinary has, *primâ facie*, the disposal of all the seats in the church, and a claimant must show some cause, as building, repairing, &c.; but against a stranger who has, *primâ facie*, no right, his possession is sufficient ground (*y*).
- Differing as against disturber or bishop.**
- Claims against bishop not favoured.** 456. The law does not favour claims against the ordinary, and good ground must be shown before any right against him can be established (*z*).
- Are construed *stricti juris*.** 457. The general right to pews being in the parish and the ordinary, any particular rights in derogation of these are construed *stricti juris*. It is the policy of our law that few of these exclusive rights should exist; it being the object of the law that all the inhabitants should be accommodated (*a*).
- What is necessary to allege, as against bishop.** 458. As against the ordinary the plaintiff should claim it, in his declaration, as *appurtenant* to a house or messuage in the parish (*b*). He should also allege that he repaired it, but this is not necessary in a dispute with a stranger (*c*).
- User always.** 459. In all cases user must be proved (*d*); though it need not be specifically pleaded (*e*).

(*u*) *Stocks v. Booth*, 1 *T. R.* p. 430.

(*a*) *Ayliffe's Par.* p. 486; *Buxton v. Bateman*, 1 *Keble*, p. 370.

(*y*) *Ashby v. Freckleton*, 3 *Levinz*, p. 73.

(*z*) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 323.

(*a*) *Pettman v. Bridger*, 1 *Phill.* p. 324.

(*b*) *Stocks v. Booth*, 1 *T. R.* p. 432, citing *Wilson's case*.

(*c*) *Kenrick v. Taylor*, 1 *Wils.* p. 327; *Ashby v. Freckleton*, 3 *Lev.* p. 73.

(*d*) *Frances v. Ley* (Star Chamber), *Croke*, 2 *Jac.* p. 366; *Boothby v. Baily*, *Hobart*, p. 69; *Knapp & ors. v. Nicholl*, 2 *Roberts. Eccl. Rep.* p. 365.

(*e*) *Merchant v. Whitepane*, 2 *Lev.* p. 193.

460. Against a disturber a jury ought to presume everything they fairly can presume, unless all ground of presumption be taken away by the facts disclosed at the trial (*f*).

CAP. II.
PRESCRIPTION.

Presumption against a disturber.

What evidence is necessary.

461. It is impossible to determine *à priori* what evidence will or will not be sufficient to support a right; it must vary in each particular case (*g*).

462. It would take very strong evidence to induce a belief that the bishop would grant a faculty to erect a seat in a chancel belonging to a lay or clerical rector (*h*).

And for chancel seat.

463. Long user and repair are the two main points to be proved in a claim by prescription. Where a church had been rebuilt forty years previously, and the plaintiff was proved to have occupied a seat for thirty-six years, Willes, J., said it was very common, after rebuilding, to leave adjustment to rector and churchwardens, and he supposed the plaintiff got his pew thus, in right of his messuage. But after so long a possession he would presume anything in favour of the plaintiff (*i*). This was apparently upon the rule of presuming everything that can be presumed as against a wrongdoer. But here it may have been assumed that the right was acquired in the original building, and continued only, not commenced, in the new one.

Long user and repair are main points. 36 years sufficient where church rebuilt about same time.

Everything presumed against a wrongdoer.

464. Where it appeared that the seat itself was built thirty-five years ago, for the accommodation of the plaintiff and to put an end to a dispute between two families, this proof was holden to rebut the presumption which would otherwise arise from so long a possession (*k*).

Claim for pew built thirty-five years failed.

(*f*) Griffith *v.* Matthews, 5 *T. R.* p. 298.

(*g*) Griffith *v.* Matthews, 5 *T. R.* p. 298; Pepper *v.* Barnard, 12 *Law J. (Q. B.)* p. 361; and 7 *Jur.* p. 1128.

(*h*) Morgan *v.* Curtis, 3 *M. & Ry.* p. 390.

(*i*) Rogers *v.* Brooks, cited in Stocks *v.* Booth, 1 *T. R.* p. 431, n.; Morgan *v.* Curtis, 3 *M. & Ry.* p. 394.

(*k*) Griffith *v.* Matthews, 5 *T. R.* p. 298.

CAP. II.
PRESCRIPTION.

Sixty years' possession is insufficient.

465. Possession of a pew in a church for above sixty years is not a sufficient title to maintain an *action on the case* for disturbance in the enjoyment of it; the plaintiff must prove a prescriptive right, or a faculty, and should claim it in his declaration *as appurtenant to a messuage in the parish (l)*.

House built eighty years insufficient.

466. In a claim for prescription for pew as appurtenant to a house, it appeared that the house had been built only eighty years, which was not sufficient to give a prescriptive right; because it might be presumed that evidence of the grant of a faculty was not extinct in that time (*m*).

Thirty-eight years of chancel seat by tenant of manor house.

467. Occupancy for thirty-eight years of a pew in the chancel by the tenant, and with permission of owner of house to which it was claimed as appurtenant, is sufficient to enable occupier to successfully maintain a suit for perturbation of seat against the incumbent who had pulled down the pew (*n*).

Thirty-five years' possession is sufficient as against disturber.

468. In an action for disturbance evidence of continued possession for thirty-five years, unanswered and unexplained, would have been sufficient to support the plaintiff's claim (as against disturber); and it was said that a jury would have been warranted in presuming that a faculty had been granted to the plaintiff's ancestor to build this pew in the chancel. But the case was not decided upon this ground, as it was shown that the site had been previously occupied by an open seat in common occupation, which destroyed the presumption (*o*).

Non-user accounted for.

469. Non-user for twenty years would be nearly, if not quite, conclusive against a claim by prescription (*p*). And

(l) *Stocks v. Booth*, 1 *T. R.* p. 428.

(m) *Walter v. Gunner & D.*, 1 *Hagg. C. R.* p. 319.

(n) *Parker v. Leach*, *Moore's P. C. Rep.*, 4 *N. S.* p. 180.

(o) *Griffith v. Matthews*, 5 *T. R.* p. 298.

(p) *Pettman v. Bridger*, 1 *Phill.* p. 328.

CAP. II.
PRESCRIPTION.

the reason why a pew has for a long time been unoccupied by the owner may be explained to the jury. Thus, where the plaintiff was of the Roman Catholic religion, and her servants had frequently been of the same persuasion, the use of two pews belonging to the house was much less than, under other circumstances, would have been expected; and this was stated as accounting for the non-user (*q*).

470. An occupation by a person and his ancestors, even for 110 years, has been held insufficient, it appearing that at the commencement of that time the pew was annexed by an agreement with the vestry (*r*). So 110 years' possession commencing with grant by vestry.

471. In a case where a pew in the chancel was built by the rector in 1797 for the occupation of his family resident in a new house, and after his death used by the tenants of the same house till 1829, and a question then arose whether the pew had become appurtenant to the house, it was considered that no prescriptive rights had been acquired (*s*). Thirty-two years insufficient for seat in chancel.

472. Length of time avails nothing where the origin is known (*t*). Plea of time fails if origin be known.

473. In one case where a pew was prescribed for in respect of a house, affidavits were made that the person so prescribing was not nor is an inhabitant there; but it was held that *possession* only, without living there, is enough (*u*). But this may be doubted. Possession without inhabitancy of house sufficient(?).

474. On the other hand it was held that, as a pew would generally go with a house, mere occupation *alone* is not sufficient to force the jury to find a right (*v*). Occupation alone not sufficient.

475. Repair by the claimant is also generally deemed Repair is generally necessary.

(*q*) *Pepper v. Barnard*, 7 *Jur.* p. 1129.

(*r*) *Fuller v. Lane*, 2 *Add.* p. 432.

(*s*) Opinion of Dr. Lushington (MS.).

(*t*) *Blake v. Osborne*, 3 *Hagg.* p. 733.

(*u*) *Vin. Abr. "Prohibition"* (G.); *S. C. Anon.* 12 *Mod.* 40.

(*v*) *Morgan v. Curtis*, 3 *M. & Ry.* p. 394.

CAP. II.
PRESCRIPTION.

- a necessary element in support of his claim (*x*); though not in respect to a seat in the chancel as against a disturber (*y*).
476. In the case of *Pepper v. Barnard* (*z*), the court would not decide whether, in an action against churchwardens for disturbance of a pew, proof of repairs is necessary.
477. It is otherwise as against a disturber, for it is a rule of law that one in possession need not show any rule or consideration against a wrongdoer.
478. What might be the effect of a very long occupancy, where no repairs have been *necessary*, does not appear to have been decided (*a*).
479. But it was held in a modern case, that evidence of the fact of repair is not absolutely necessary, simply because repair may not, within the memory of any one living, have been required (*b*).
480. If any repairs have been required within memory, it must be proved that they have been made at the expense of the party setting up the prescriptive right. The *onus* and *beneficium* must go together:—mere occupancy does not prove the right (*c*).
481. When an aisle has been used to be repaired at the charge of all the parish in common, the ordinary may appoint whom he pleases to sit in it, notwithstanding any usage to the contrary (*d*).
- Doubted whether essential even against wardens.
- Not necessary against disturber.
- Formerly undecided where no repairs have been necessary.
- Now held not absolutely necessary.
- But, if any, must have been done by inhabitants of house.
- Aisle belongs to parish, if repairers.

(*x*) Ayliffe's *Parer*. p. 486; *Frances v. Ley*, *Croke*, 2 *Jac.* p. 366; *Boothby v. Bailey*, *Hobart*, p. 69; *Buxton v. Bateman*, 1 *Keble*, p. 370; *Woollocombe v. Ouldrige*, 3 *Add.* p. 6.

(*y*) *Buxton v. Bateman*, 1 *Keble*, p. 370.

(*z*) *Pepper v. Barnard*, 7 *Jur.* p. 1129.

(*a*) See *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*b*) *Knapp v. Nicholl*, 2 *Roberts. Eccl. Rep.* p. 366.

(*c*) *Pettman v. Bridger*, 1 *Phill.* p. 325.

(*d*) *Frances v. Ley*, *Cro. Jac.* p. 366.

482. Very slight repair will, therefore, suffice; and, as thirty years in the Ecclesiastical Courts constitute a prescription, it is not necessary to go back further with evidence of repair (*e*).

CAP. II.
PRESCRIPTION.

Evidence of repair during thirty years sufficient.

483. Cleaning done by the parish is not repair to affect a prescriptive right (*f*).

Cleaning is not repair.

484. Lining a pew and putting in cushions is not to be a repairing, or an act of ownership, it being a mere question of comfort (*g*).

Nor lining.

485. Constant sitting and burying, without using to repair, does not suffice (*h*).

Sitting and burying alone not sufficient.

486. The fact of repair must be pleaded in order to maintain a claim as against the ordinary (*i*).

Repair must be pleaded as against bishop.

487. If repair were at any time done at the expense of the parish, that circumstance would tend strongly against a claim by prescription (*k*).

Repair by parish adverse to prescription.

488. The ordinary has *prima facie* the disposal of all the seats in the church, and against him a title or consideration must be shown in the declaration and proved (*l*).

Title must be pleaded and proved as against bishop.

489. As against a disturber the plaintiff may declare upon his possession, without alleging usage to repair, prescription, or other ground of action, for that may be proved in evidence (*m*).

Sufficient to plead possession as against disturber.

(*e*) Knapp v. Nicholl, 2 Roberts. Eccl. Rep. p. 367.

(*f*) Churton v. Frewen, L. R., 2 Ex. p. 657.

(*g*) Morgan v. Curtis, 3 M. & Ry. p. 393; Pettman v. Bridger, 1 Phill. p. 332.

(*h*) Frances v. Ley, Croke, 2 Jac. p. 366.

(*i*) Stedman v. Hay, 1 Comyn's Rep. (2nd ed.), p. 368; Bradbury v. Burch, 1 Jones, p. 4; Ashby v. Freckleton, 3 Lev. p. 73; Fuller v. Lane, 2 Add. 427.

(*k*) Knapp v. Nicholl, 2 Roberts. Eccl. Rep. p. 366; Frances v. Ley, Croke, 2 Jac. p. 366.

(*l*) Burn's Eccl. L. p. 362; Kenrick v. Taylor, 1 Wilson, p. 326.

(*m*) Comyn's Dig. "Action on Case for Disturbance" (A. 3); 1 Lev. p. 71; 2 Lev. p. 193; 3 Lev. p. 73; 1 Sid. pp. 88, 203.

CAP. II.
PRESCRIPTION.Usual form of
declaration.

490. The usual mode of declaring in an *action on the case* for disturbance is, to the effect that the plaintiff was possessed of a certain messuage, and, by reason thereof, ought to have for himself and family, inhabiting the said messuage, the use and benefit of a certain pew in the chancel (or otherwise) of the church of to hear and attend divine service therein, as to the said messuage belonging and appertaining (*m*).

Repair of one
pew, evidence
as to all under
same title.

491. An *action on the case* being brought against the churchwardens, it appeared, that so far as living memory extended, there had been three pews adjoining each other—one used by the family, another by their servants, and a third by a farmer residing on a farm, the house belonging to which was the ancient mansion of the family. It was held that proof of repairs done to one of these pews was evidence as to all, and, therefore, included the pew in question (*n*).

Repair by a
corporation
good.

492. It has been held a good prescription to say, “that time out of mind the corporation did repair such an aisle of the church, *ratione cujus* the mayor and aldermen sat there.” For though the right be in the whole body, the enjoyment may be and enure to a select number (*o*).

Cost may be
charged to
borough.

493. Where the members of a corporation have, as such, occupied a particular pew in the parish church, the repairs of it may be properly charged on the borough fund (*p*).

Rebuilding by
parish acts as a
cession.

494. Where a pew has been rebuilt by the parish, there would be a cession of the pew to the parish, unless some express agreement to the contrary could be shown (*q*).

(*m*) *Stocks v. Booth*, 1 *T. R.* p. 430; and see *Morgan v. Curtis*, 3 *M. & Ry.* p. 389.

(*n*) *Pepper v. Barnard*, 7 *Jur.* p. 1128.

(*o*) *Jacob v. Dallo*, 6 *Mod.* p. 231.

(*p*) *Reg. v. Mayor of Warwick*, 10 *Jur.* p. 262, and 15 *L. J., Q. B.* p. 306.

(*q*) *Pettman v. Bridger*, 1 *Phill.* p. 329.

495. But where the pew has been destroyed by the parish in consequence of the rebuilding of the church, and without the consent of the owner, that fact could not divest him of his right to a pew built on the same spot (*r*).

CAP. II.
PRESCRIPTION.

Not so when destroyed by rebuilding the church.

496. Payment of rent proves that those who paid it could have no exclusive rights either by faculty or prescription (*s*).

Rent is conclusive against claim.

497. An old entry in the vestry book, signed by the churchwardens, stating that the pew had been repaired by a former owner of the messuage, under whom the plaintiff claimed, in consideration of his using it, was held to be admissible evidence in support of the plaintiff's right, as having been made by the churchwardens within the scope of their official authority (*t*). (So given by Taylor on Evidence (*u*). *Sed quære*. As reported, the entry seems rather to indicate a commencement of occupation, and, by showing the date of origin, to put an end to a claim by prescription).

Entry in vestry book by wardens good evidence.

498. But old entries in a vestry book made by a churchwarden, apparently not in the discharge of any public duty, and by which he has not charged himself, but merely memoranda of repairs done, are not evidence (*x*).

But not unless officially entered.

499. A hatchment and inscription, certainly more than 100 years old, though not thrown out of consideration, but giving it all its just weight, is only an element in the case of ownership (*y*).

Hatchment and inscription may assist proof.

500. The fact of a pew having formerly been open would operate very strongly against any claim to a prescription, because the difference between an open and a

Strong adverse probability where pew was formerly open.

(*r*) *Swetnam v. Archer*, 8 *Mod.* 338.

(*s*) *Parham v. Templar*, 3 *Phill.* p. 518.

(*t*) *Price v. Littlewood*, 3 *Camp.* p. 288.

(*u*) Taylor on Evidence, p. 1415, par. 1578.

(*x*) *Cook v. Banks*, 2 *C. & P.* p. 478.

(*y*) *Chapman v. Jones*, *L. R.*, 4 *Ex.* p. 283.

CAP. II.
PRESCRIPTION.

Enlarging
gives strong
adverse infer-
ence.

Priority in
seat may be
prescribed for.

Also any par-
ticular place in
a seat.

In contentions
about priority,
bishop may
inhibit tem-
porarily.

Joint prescrip-
tion, whether
tenancy in
common or
otherwise.

closed pew is so strong, that the probability is, that so soon as the party had ascertained his rights, he would inclose; the fact of the seat having formerly been open, destroys the prescription (*y*).

501. The fact of enlarging a pew, though it would not of itself destroy the prescriptive right, may operate on a jury as to the existence of such prescriptive right; since if it existed, the party would have put it in hazard by the enlargement (*z*).

502. Where a man claimed the upper place in a seat in the church, and was disturbed in a violent manner; and the bishop sent an inhibition against the former until the matter should be determined before him; a prohibition was granted, because as well the priority in the seat as the seat itself may be claimed by prescription (*a*).

503. In like manner may an inhabitant, in respect of his house, prescribe to first, second or third place in the same seat, which has immemorially been repaired by him, and the rest who jointly sit with him (*b*).

504. If there be any contention about the priority, the bishop may inhibit them from making a disturbance until the controversy be tried in the temporal court, and may excommunicate the disturbers (*c*).

505. If two pretend to have title to a seat by prescription, and thereupon jointly bring an *action on the case* for a disturbance, and declare upon a joint right and prescription; if upon the evidence it shall appear that they are not joint tenants, but tenants in common, they cannot recover, but must be nonsuited. Because such evidence does not

(*y*) *Morgan v. Curtis*, 3 *M. & Ry.* pp. 390, 392.

(*z*) *Ibid.* p. 393.

(*a*) *Carleton v. Hutton*, *Noy*, p. 78, and *Latch*, p. 116, and *Palm.* p. 424.

(*b*) *Prid.* p. 300.

(*c*) *Carleton v. Hutton*, *Noy*, p. 78, and *Latch*, p. 116, and *Palm.* p. 424; *Buxton v. Bateman*, 1 *Sid.* p. 89.

maintain the title upon which they bring their action, and as tenants in common they cannot make a joint prescription, but ought to prescribe severally (*d*).

CAP. II.
PRESCRIPTION.

506. As to the abandonment of an admitted right by prescription, there seems a doubt as to the necessary means. In a case where the owner of a chapel agreed that the churchwardens should partition off and fit up part, and place parishioners there; which being done at the expense of the parish, he revoked the permission and brought an action against the churchwardens for disturbance; it was held in the Queen's Bench, on the authority of *Wood v. Leadbitter*, that there having been no deed there was no grant, and the plaintiff might revoke the licence (*e*).

Abandonment
of right by
prescription.
Grant under
seal necessary.

507. *Sed quære*. It is not an easement in land; the plaintiff has nothing in the soil of the pew, nor does the agreement profess to convey any easement to the defendant, which distinguishes it from that case. An easement cannot be granted save by deed. Had this licence been to do an act on the plaintiff's soil, it might have been revocable as being a grant of an easement, and yet not under seal; but it is to do an act on the soil of another, for the pew is the rector's freehold (*f*). (As to abandonment of right of way by non-user, *Ward v. W.*, 21 *L. J. (Exch.)* 334; and *Queen v. Chorley and anor.*, 12 *Q. B.* 515.)

Doubt as to
necessity for
grant under
seal.

508. In the case referred to as the authority for the decision, it was held that a licence under seal, if a mere licence, is as revocable as a licence by parol; and a licence by parol coupled with a grant of a nature capable of being made by parol, is as irrevocable as a licence by deed. But a licence by parol, coupled with a parol grant or pretended grant of something which can only be granted by deed, is

Licence, if not
necessarily
under seal,
is revocable by
parol.

(*d*) *Snelgrave v. Brograve*, *Palm.* p. 161; *Watson*, p. 387.

(*e*) *Adams v. Andrew*, 15 *Q. B.* p. 284.

(*f*) *Olipphant*, pref. xv.; referring to *Adams v. Andrews*.

CAP. II.
PRESCRIPTION.

Permitted use by tenant for twenty years is virtually an abandonment.

a mere licence: it is not an incident to a valid grant, and is therefore revocable (*g*).

509. A pew annexed to a mansion by a prescriptive title, and formerly used by the servants of the family, had been occupied upwards of twenty years by a tenant of some of the land belonging to the estate. This tenant continued to use the pew until his death, which took place three years after the expiration of his tenancy. The owner of the mansion had lined and cushioned the pew to accommodate his visitors, when that in his own occupation was full. It was held that the fact of another person (a tenant on the estate), having had possession for so long a time, was virtually an abandonment of the right to the pew (*h*).

Facilities for surrender given by Act of 1869.

510. By an Act passed in 1869, whenever by virtue of any public or private act, or any deed or instrument, any sittings in a church or chapel of the Church of England are subject to any trust as to the grant, demise, sale or disposal thereof, or are the private property of any person, the trustees or other persons are empowered to surrender the same absolutely by deed to the bishop, or the ecclesiastical commissioners; and such sittings then become subject to the same laws, as to all rights and property therein, as the pews and sittings of ancient parish churches are now subject to (*i*).

Materials in nature of heirloom.

511. The property in the materials of a pew held, or once held by prescription, resembles that in a monument, and is in the nature of an heirloom (*k*).

What are heirlooms.

512. And heirlooms are such things as go by special custom and not by common law (*l*); the termination *loom*

(*g*) *Wood v. Leadbitter*, 13 *M. & W.* p. 838, and *Law J. Rep.*, 14 *N. S.*, *Ex.* p. 161.

(*h*) *Pettman v. Bridger*, 1 *Phill.* p. 331.

(*i*) 32 & 33 *Vict. c.* 94, ss. 2, 3 & 5.

(*k*) *Corven's case*, 12 *Co. Rep.* p. 106; 3 *Blackst. Com.* p. 429.

(*l*) 14 *Vin. Abr.* p. 291.

is derived from the Saxon word *Leome*, which signifies a limb, branch or member (*m*), so that an heirloom is nothing else but a limb, branch, or member of the inheritance (*n*).

CAP. II.
PRESCRIPTION.

513. Now, monuments, coats of arms painted in the windows or elsewhere, pennons, hatchments, &c., put in the church for the memory of the deceased buried there, are a sort of heirlooms, and when once regularly set up they cannot be pulled down again, either by the churchwardens, minister, or ordinary, because they belong to the heir (*o*).

Monuments are a sort of heirloom.

514. The right of property in the wood-work of a pew, held by a prescriptive title and good against the ordinary, appears to be similar to that in a monument. In each case the material is attached to the parson's freehold, and in neither case can he pull the erection down (*p*). And Mr. Justice Dodderidge seems to have been of this opinion in the case he mentioned during the argument in Gilbert's case (*q*).

Wood-work of a pew held by prescription is similar.

515. Now, as the property in monuments, tombs, &c., remains in the heir (*r*), and does not go to the parson, who has the freehold, it would seem that, *à fortiori*, a person erecting a pew, or the owner of one already erected, on a place to which he has a prescriptive right against the ordinary, in respect of a house or messuage in the parish, has some property in the wood-work of the pew.

So owner of pew has property in its materials.

516. And in the celebrated case of Lady Wyche, in 1468, which was a suit in the King's Bench against the parson for removing the coat-armour and pennons of arms

Lady Wyche's case in 1468.

(*m*) Bosworth's *Anglo-Saxon Dic. s. v.*; 2 *Bla. Com.* p. 427; *Co. Litt.* p. 18 b.

(*n*) 2 Steph. *Com.* p. 242 (6th ed.).

(*o*) *Prid.* p. 101; 3 *Co. Inst.* p. 202; Corven's case, 12 *Co. Rep.* p. 105.

(*p*) See Degge, pt. 1, cap. xii.

(*q*) *May v. Gilbert*, 2 *Buls.* p. 151.

(*r*) Degge, pt. 1, cap. xii.

CAP. II.
PRESCRIPTION.

and sword of Sir Hugh Wyche, her late husband, from the chapel where he was buried; and was decided in her favour. The reporter or compiler adds: "Query as to this matter, for I understand that the oblation shall be adjudged according to the intent of the donor" (*s*).

Cloth provided by parish and hung up in church, rector cannot remove.

517. And even in a case where black cloth had been hung up in a church, in memory of the Princess Charlotte, and no agreement had been entered into with the rector, it was held, by Mr. Justice Bayley, that the rector had no right to take any of the cloth, because by law he was not entitled to take such a property, unless by matter of agreement with the parties to whom it belonged (*t*).

Materials of pews erected by others do not belong to clergy or wardens.

518. The churchwardens cannot claim the materials of pews they have *not put up*, and the clergyman has them only when the pew has been built by a person having *no right to put them there*: therefore the property in the materials of a pew built by a person having a prescriptive title, is neither in the clergyman nor churchwardens.

Apparently to owner of pew.

519. Consequently, assuming, as it has been decided, that a person can have a prescriptive right to a pew against the ordinary, the materials, when taken down, would certainly seem to belong to the owner of the pew.

Action for pulling down, not maintainable by invalid grantee.

520. As a grant of a part of a chancel, by a lay impropiator to a man and his heirs and assigns, is not valid in law, the grantee or those claiming under him cannot maintain an action for pulling down pews there erected (*u*).

Claims for prescription frequent cause of litigation.

521. One very detrimental effect arising from prescriptive titles is their giving rise to an infinite number of claims founded on possession only, and which, should they be investigated, might not be legally maintainable. Since,

(*s*) *Year Book*, 9 Ed. IV. (ed. 1597, p. 14).

(*t*) *Cramp v. Bayley*, Degge's *P. C.*, Ellis' ed. p. 218, n.

(*u*) *Clifford v. Weeks*, 1 *B. & A.* p. 498.

for practical purposes, it is not easy to define what is absolutely necessary to constitute prescription, claims are set up of a doubtful character, which greatly impede the churchwardens, and in some cases the court, in making arrangements for the distribution of the church room, which the interests of the parish most require (v).

522. Prescription is said to be the highest kind of title, and one which can only be altered by Act of Parliament. A recent Act has lately meddled with such titles. The Act for uniting city churches provides that where parishes have been united, the bishop may issue a faculty to alter and re-adjust the seats and their appropriation, so that at least half be unappropriated; and the remainder shall be at the disposal of the churchwardens (under the control of the bishop) for the use of the parishioners of the united parishes, discharged from all prescriptive and other pre-existing rights (x).

Prescription
affected by Act
for union of
city churches.

523. As it has already been stated, the Ecclesiastical Court has power to try all questions respecting pews, except where a prescriptive right intervenes and is not admitted (for if the prescription be admitted the Ecclesiastical Court may go on with the cause [y], because it has jurisdiction over the subject-matter).

Jurisdiction of
Ecclesiastical
Court.

524. In like manner the interference of any other court with the Ecclesiastical Court may be stopped by prohibition. Thus in a suit before the Court of High Commission at York against a clergyman for non-residence, disturbing some of the congregation in church, and other disorderly conduct, a prohibition was granted, for the complaint in such matters ought to be made to the ordinary (z).

Prohibition of
any other court
interfering.

(v) *Report on Eccl. Courts*, 1832, 12mo. ed. p. 131.

(w) 23 & 24 Vict. c. 142, s. 28.

(y) *Jacob v. Dallow*, 2 *Salk.* p. 551, and 2 *Ld. Raym.* p. 755; *Fall v. Hutchins*, 2 *Cowp.* p. 424.

(z) *Howson's case*, *Litt. Rep.* p. 152.

CAP. II.
PRESCRIPTION.

Prohibition
may be granted
by King's
Bench, Ex-
chequer or
Chancery.

Abuses arising
from lavish
prohibitions at
one time.

Grounds of
prohibition are
defect of juris-
diction, or in
mode of trial.
Ecclesiastical
Court cannot
try question of
fact.

525. Where there is a question of prescription to be tried, the power of the Ecclesiastical Court ceases (except by consent of parties), and any attempt to exercise such power may be at once met by a prohibition granted by the King's Bench (*z*), or Exchequer (*a*), or Chancery (*b*).

526. It would appear from certain *Articles touching abuses in the granting of Prohibitions*, exhibited by Archbishop Bancroft, in the name of the whole clergy, to the Lords of the Privy Council in 1603, that prohibitions of the Ecclesiastical Courts were granted freely and often on very frivolous pretences, at any time in the suit and after several sentences, and even at the instance of the plaintiff in the suit; causing great expense, and repeatedly to the extent of as many as six prohibitions and consultations in one suit; and were only removable by consultation after a length of time, and at great cost, although the prohibition was granted quickly, on *ex parte* statement and in chambers. And the king's authority was greatly impugned by such prohibitions (*c*). The subject continued for a long time under consideration (*d*).

527. The general grounds of a prohibition to the Ecclesiastical Courts are either a defect of jurisdiction, or a defect in the mode of trial. If any fact be pleaded in the Ecclesiastical Court and the parties are at issue, that court has no jurisdiction to try it, because it cannot proceed according to the rules of common law, and in such case a prohibition lies. Or where the Spiritual Court has no original jurisdiction a prohibition may be granted (*e*).

(*z*) *Witcher v. Cheslom*, 1 *Wilson*, p. 17.

(*a*) *Smyth's case*, 2 *Crompton, Mees. & R.* p. 754.

(*b*) 1 *Peere Wms.* p. 43.

(*c*) 2 *Coke's Inst.* p. 602.

(*d*) As appears, *e. g.*, from a letter from the Archbishop to the Bishop of Worcester in 1608-9, *Worcester Registry, Reg. Bullingham*.

(*e*) *Leman v. Goulty & anor.*, 3 *T. R.* p. 4.

528. But otherwise if the prescription be admitted as a defendant does a modus or pension by prescription (*f*).

CAP. II.
PRESCRIPTION.

529. The Spiritual Court may in several cases proceed upon libels grounded on prescription where the prescription is not denied (so that such suits are not absolutely *coram non judice*); and the reason why a prohibition shall be granted where the prescription or custom is denied, seemeth to be this; that the notion of customs and prescriptions is different, by the ecclesiastical law, from what it is at common law as to the time in which such custom or prescription may be created; for the ecclesiastical law allows of different times in creating customs or prescriptions, and generally of less time than is allowed of in common law, which owns no time in such case, but that whereof there is no memory of man to the contrary (*g*).

May proceed if prescription be admitted.

Reason for prohibition, in differing time of prescription.

530. Prohibitions are granted either absolutely, or *quousque*, only till such an act be done; *e. g.* the denial of a copy of the libel, when the prohibition is *ipso facto* discharged by granting the copy. The first of these is peremptory, and ties up the inferior jurisdiction until a consultation; the second is *ipso facto* discharged upon performing the act (*h*).

Prohibition is either absolute or *quousque*.

531. A prohibition is commonly said to be a charge, by the king's writ, directed to the Spiritual Court, forbidding them to proceed further in a certain cause then depending, formerly upon a suggestion, but now on an affidavit, either that the cognizance of the cause does not belong to them; or that they are dealing with some point beyond their jurisdiction; or that they are proceeding otherwise than the law warrants (*i*).

Definition of prohibition.

(*f*) Jacob *v.* Dallow, 2 *Salk.* p. 551, and *Ld. Raym.* p. 755.

(*g*) Watson, c. 39; Burn, p. 366.

(*h*) Bac. *Abr.* "Prohibition" (F); Anon. 6 *Mod.* p. 308.

(*i*) Ayliffe's *Parerg.* p. 435; Wood's *Inst.* p. 525.

CAP. II.
PRESCRIPTION.

Granted for want or excess of jurisdiction, or for defect of trial.

Prohibition when plea of prescription was rejected.

For a seat, only on account of prescription.

Unsound discretion is subject of appeal, not prohibition.

Want of original jurisdiction is fatal.

532. Prohibition may be granted where it is shown that the court is proceeding contrary to the general law of the land, or beyond its jurisdiction (*h*), and either from want or excess of original jurisdiction or defect of trial; thus where an issue is raised upon a question of fact, which can only be tried by a jury in the temporal court (*i*).

533. In a suit in the Ecclesiastical Court upon an application for a faculty for a seat, a prescriptive right to the pew as appurtenant to a messuage and always repaired, was pleaded in opposition; but the court rejected the plea. Prohibition was granted both for want of jurisdiction and want of trial (*k*).

534. Where a person is sued in the Ecclesiastical Court for a seat in the church, if he would obtain a prohibition and oust the ordinary of jurisdiction, he must show such a legal title as cannot be tried in the Ecclesiastical Court, and this can only be by prescription (*l*).

535. If an unsound discretion be exercised by the Ecclesiastical Court, it is a ground of appeal (*m*). Thus if the ecclesiastical judge give a wrong sentence on the merits, where he has jurisdiction, that is the subject-matter of appeal, and *not* of prohibition (*n*).

536. It is very clear that an Ecclesiastical Court cannot proceed in any cause, where it has not an original jurisdiction of the subject-matter; and if it does, a prohibition goes of course (*o*).

(*h*) *Ex parte Smyth*, 2 *Crompt.*, *M. & R.* p. 754; and 5 *Nov. & M.* p. 149; 5 *Adol. & E.* p. 724; 1 *Har. & W.* p. 419.

(*i*) *Byerley v. Windus*, 5 *B. & C.* p. 1; *Hallack v. Univ. of Cam.*, 1 *Q. B.* p. 615.

(*k*) *Swetnam v. Archer*, 8 *Mod.* p. 338.

(*l*) *Stedman v. Hay*, 1 *Com. R.* p. 368.

(*m*) *Butt v. Jones*, 2 *Hagg.* p. 424.

(*n*) *Leman v. Goulty*, 3 *T. R.* p. 5; *Griffin v. Ellis*, 11 *A. & E.* p. 756.

(*o*) *Darby v. Cosens*, 1 *T. R.* p. 555.

537. Thus prohibition lies when one sues another in the Spiritual Court for a lay fee, that is, for lands or tenements, &c. (*p*).

CAP. II.
PRESCRIPTION.

538. And if one sues another in the Spiritual Court for a chattel, a debt or a trespass, prohibition lies (*q*).

As in suit for a lay fee.
Or for a chattel or trespass.
Or for breaking open a chest and taking away title-deeds of advowson.

539. Thus a prohibition was granted to stay a suit in the Spiritual Court, for breaking open a chest in the church, and taking away the title-deeds of the advowson, because the title-deeds being subject of the suit, only *trespass* or *trover* could be maintained in the temporal courts for taking them (*r*).

540. But where a person was libelled in the Spiritual Court for taking the church bells, the Court of Queen's Bench refused to grant a prohibition, because though the churchwardens might have maintained an action at common law, the most proper remedy was in the Spiritual Court (*s*). The parties who libelled being *custodes* of the property, and the bells being the goods of the church (*t*).

Spiritual Court has jurisdiction respecting removing the church bells.

541. A person (? parson) libelled against the defendant in the Spiritual Court of York for having cut elms in the churchyard; and a prohibition was granted, upon suggestion that they grew on his freehold (*u*).

Nor for cutting trees in churchyard.

542. And a suit cannot be maintained in the Ecclesiastical Court, against a churchwarden, for breaking a church wall, and cutting down the boughs of trees in a churchyard. For the rector having a freehold in him has a right to bring his action; and, therefore, the party must

Nor for breaking church wall.

(*p*) *F. N. B.* p. 40 (I); *Vin. Abr.* "Prohibition" (F. 1).

(*q*) *F. N. B.* p. 40.

(*r*) *Gardner v. Parker*, 4 *T. R.* p. 351.

(*s*) *Welcome v. Lake*, 1 *Sid.* p. 281; 2 *Keb.* p. 22.

(*t*) *Gardner v. Parker*, 4 *T. R.* p. 351; but see *Starky v. Churchwardens of Watlington*, 2 *Salk.* p. 547.

(*u*) *Hilliard v. Jeffreson*, 1 *Ld. Raym.* p. 212.

CAP. II.
PRESCRIPTION.

Most prohibitions granted for excess of jurisdiction.

not be subjected to a double prosecution (*x*). The ordinary cannot punish a single trespass in the church which does not hinder the service; which is included under the statute *Circumspectè agatis—de ecclesiâ discoopertâ*.

Prohibition granted for defect of trial.

543. The largest class of cases, in which prohibitions have been granted by the Queen's Courts at Westminster, is, where a plain and manifest excess of jurisdiction has appeared to have been claimed or exercised by the Ecclesiastical Court (*y*).

As in matters properly triable at common law.

544. Temporal incidents are to be tried according to the rules of common law (*z*); and if they are handled differently, it is a *defect of trial*, for which a prohibition will be granted.

If for sake of trial, must be before sentence.

545. Where matters are properly and essentially triable at common law, and the party comes for a prohibition before sentence, the Court of Queen's Bench will grant it, *for the sake of trial*. But if the party submit to trial, he is afterwards too late (*a*).

546. In case of prohibition to be granted for the sake of trial (as distinguished from those which are to be granted upon account of a wrong trial or erroneous judgment), the rule is established, that a party neglecting to contest the jurisdiction in the first instance, and taking his chance of a favourable decree, shall not be allowed, after sentence, to allege the want of jurisdiction as a ground of prohibition, unless the defect appear on the face of the pleadings.

Object of King's Bench in making such rule.

547. The justice of this rule is very apparent—the propriety of the exception, scarcely less so; for it is the duty of the Court of King's Bench to restrain any encroachment

(*x*) *Binsted v. Collins*, *Burb.* p. 229.

(*y*) *Veley v. Burder*, 12 *A. & E.* p. 311.

(*z*) *Shotter v. Friend*, 2 *Salk.* p. 547.

(*a*) *Full v. Hutchins*, 2 *Corp.* p. 424.

of jurisdiction on the part of the inferior courts; and, therefore, it interferes for the sake of the public, and not of the individual, where from the want of jurisdiction appearing on the face of the proceedings the case might become a precedent if allowed to stand without impeachment (*b*).

CAP. II.
PRESCRIPTION.

548. It may be conceded that in cases where it is shown that an inferior court is proceeding beyond its jurisdiction, a party is entitled to a writ of prohibition, not as a matter of discretion, but *ex debito justitiæ* (*c*).

If acting beyond jurisdiction, prohibition is *ex debito justitiæ*.

549. The Court of Chancery may award a prohibition, which may issue as well in vacation as in term time; but such writ is returnable into the Queen's Bench, or Common Pleas (*d*).

Chancery may grant prohibition.

550. On a motion for prohibition there must be an affidavit that the matter suggested to have been pleaded, was pleaded in the Spiritual Court (*e*).

Prohibition granted on affidavit.

551. A defendant cited in an Ecclesiastical Court must appear before he can apply for a prohibition (*f*).

Defendant cited in Ecclesiastical Court must appear.

552. No prohibition will be granted where there is neither plea nor allegation leading to an issue on any matter which the Spiritual Court is incompetent to determine (*g*).

Must be an allegation in Spiritual Court.

553. When it is pleaded, it ties up the hands of the ordinary from any further proceeding, because the Spiritual Court cannot try a prescription (*h*).

Which is then stopped.

(*b*) *Bodenham & ors. v. Ricketts*, 6 *Nev. & Man.* p. 176; 4 *Ad. & E.* p. 441; 1 *Har. & Wol.* p. 754.

(*c*) *Ex parte Smyth*, 2 *Crompt. M. & R.* p. 754.

(*d*) *Bro. Abr.* "Prohibition," part 6; 4 *Inst.* p. 81; 1 *Peere Wms.* p. 43.

(*e*) *Burdett v. Newell*, *Ld. Raym.* p. 1211.

(*f*) *Ex parte Law*, 2 *A. & E.* p. 45; *Rex v. Mills*, 4 *N. & M.* p. 7.

(*g*) *E. of Beauchamp v. Turner*, 10 *A. & E.* p. 221.

(*h*) *Swetnam v. Archer*, 8 *Mod.* p. 338.

CAP. II.
PRESCRIPTION.

Both parties must plead. Prohibition grantable as soon as prescription is denied.

Where Ecclesiastical Court has jurisdiction as to part of question.

No interference with suit about faculty to confirm alterations.

Galleries built under faculties to University, which claimed a subsequent addition.

554. But the parties must plead, for perhaps they may admit the plea (*i*).

555. But when once it appears by the proceedings in the Spiritual Court, that the prescription instead of being admitted is disputed, and that the parties are in progress to bring its existence to trial, the courts of common law are not bound to wait till the parties have incurred the expense of putting it in issue; and the prohibition is grantable at once (*k*).

556. The Court of Queen's Bench will presume that the Ecclesiastical Court will limit its decision to points which it may properly embrace, and will not prohibit the Ecclesiastical Court from proceeding to judgment, although the faculty *prayed* for is larger than the court has power to grant (*l*).

557. A court of common law has no power to prohibit the Ecclesiastical Court from granting a faculty to confirm alterations which have been already made; the suit, therefore, must proceed *quoad* them, in order that the Ecclesiastical Court, within whose proper jurisdiction that matter is, may determine whether the faculty be granted or not (*l*).

558. By a faculty granted A.D. 1738, by the Ecclesiastical Court of Ely, the Masters of Arts' Pit and the north and south galleries in the parish church of Great St. Mary, Cambridge, were appropriated to the University. In A.D. 1819, by agreement with the then churchwardens, the University, at their sole cost, enlarged the Masters of Arts' Pit and the galleries, and erected ten new pews, and for that purpose removed the organ into the tower,

(*i*) Anon., 2 *Salkeld*, p. 551.

(*k*) *Byerley v. Windus*, 5 *B. & C.* p. 22, and 7 *Dowl. & Ry.* p. 564.

(*l*) *Hallack v. Univ. of Cam., Ad. & E., N. S.*, 1 *Q. B.* p. 614, and 1 *Gale & D.* p. 113; 9 *Degge*, p. 583.

and made other alterations. The University afterwards instituted, by letters of request, a suit in the Court of Arches against the churchwardens and parishioners, to confirm the erections and alterations, *and to appropriate the same to the University and their successors exclusively.* The official principal received the letters of request, and an act on petition, answer and reply were delivered (*m*).

CAP. II.
PRESCRIPTION.

559. To a declaration in prohibition, by the churchwardens, &c. disclosing these facts, the University demurred, and the Court of Queen's Bench gave the defendants in prohibition judgment, on the ground that, supposing the grant of a faculty for a pew to a corporation illegal, and that prohibition would lie for a faculty before it is granted (which seems doubtful), yet a faculty to confirm erections and alterations would be legal, and the Spiritual Court had done nothing illegal as yet, and it was to be presumed that it would limit the faculty to those objects, which legally might be embraced in it (*m*).

Queen's Bench
presumes
Ecclesiastical
Court will not
exceed its
jurisdiction.

560. But where matters which are triable at common law arise incidentally in a cause, and the Ecclesiastical Court has jurisdiction in the principal point, prohibition to stay trial will not be granted (*n*). Still if any incidental matter intervenes by which the jurisdiction of the Ecclesiastical Court is ousted of its original jurisdiction, in that case a prohibition must go (*o*).

Will not necessarily interfere.

561. A faculty being prayed to confirm certain alterations in a church, and for permanently appropriating seats gained thereby, the Court of Queen's Bench held that it had no power to prohibit the grant of faculty for the former object, and that it was by no means a clear point

Perhaps
granted
ex gratia in a
question of per-
manent appro-
priation.

(*m*) Hallack v. Univ. of Cambr., *Ad. & E. N. S.*, 1 *Q. B.* p. 614, and 1 *Gale & D.* p. 113; 9 *Degge*, p. 583.

(*n*) Full v. Hutchins, 2 *Comp.* p. 424.

(*o*) Darby v. Cosens, 1 *T. R.* p. 555.

CAP. II.
PRESCRIPTION.Resolution of
Star Chamber.

whether prohibition would lie in respect to the latter part of the application; if so, it would be only *ex gratiâ* (r).

562. It was resolved in the Star Chamber, that if a man have a house in any parish, and time out of mind, he and all those whose estate he has, have used to have a certain pew in the church; if the ordinary will displace him, he shall have a prohibition; but he must claim the seat as belonging to his house (s).

Prohibition to
suit on claim
by a non-
parishioner.

563. As a non-parishioner can have no right to a seat in the body of the church, except by prescription, prohibition will be granted against the Spiritual Court in a suit by an extra-parochial person for a pew in the body of the church, either if claimed by any other title than prescription, or if claimed by that title and denied by the other side (t). This is on the ground that an issue has been raised in the Ecclesiastical Court upon a question of fact, which can only be tried by a jury in the temporal court (u).

Whether pew
is appurtenant
to a house
must be tried
by jury.

564. When a right is annexed to a house in the parish, any obstruction to that right is a detriment to the occupation of the house; and it is only on account of a pew being annexed to a house that the temporal courts can take cognizance of any intrusion into it (x). Whether a pew is appurtenant to an ancient house is a question for the consideration of a jury (y).

Prohibition at
any time before
sentence.

565. It is not necessary for the party to apply in the first instance for a prohibition; if he make an application

(r) *Hallack v. Univ. of Camb.*, *Ad. & E.*, *N. S.*, 1 *Q. B.* p. 614; and 1 *Gale & D.* p. 113.

(s) *Corven's case*, 12 *Co. Rep.* p. 106, n.; *Garven v. Pym*, *Godb.* p. 200; 3 *Inst.* p. 202; citing *Hussey v. Layton*.

(t) *Byerley v. Windus*, 5 *B. & C.* 1; and 7 *Dowl. & Ry.* p. 564.

(u) *Hallack v. Univ. of Camb.*, 1 *Gale & D.* p. 113.

(x) *Mainwaring v. Giles*, 5 *B. & A.* p. 362.

(y) *Griffith v. Matthews*, 5 *T. R.* p. 297.

any time before sentence, he is in time ; no other line can be drawn (*b*).

CAP. II.
PRESCRIPTION.

566. Where the Spiritual Court has no original jurisdiction, a prohibition may be granted *after* sentence (*c*).

Or after, if no original jurisdiction.

567. And a prohibition was granted after an appeal to the Arches, and then to the Delegates, and sentence affirmed there ; it appearing that a custom as to the ordering and disposing of the seats had come into question (*d*).

Even after appeal to Delegates.

568. After sentence prohibition shall not go, unless want of jurisdiction below appears upon the face of the proceedings (*e*).

But only if such defect be apparent on proceedings.

569. A prohibition does not lie after sentence, unless it appears by the sentence that the Ecclesiastical Court has pronounced on matters conusable at common law, although there are several articles contained in the libel, some of which are not conusable (*f*).

And not if part only, of articles pleaded, are conusable at common law.

570. The distinction in cases where prohibition does not lie after sentence is this :—If it appears on the face of the libel that the Ecclesiastical Court has no jurisdiction of the cause, a prohibition shall go ; because there *interest reipublicæ* that they should not encroach on the jurisdiction of the temporal courts, and in such case their sentence is a nullity (*g*).

Distinction of cases where prohibition after sentence is or is not granted.

571. After sentence it is incumbent on the party making

A doubt is a sufficient objection.

(*b*) *Darby v. Cosens*, 1 *T. R.* p. 555.

(*c*) *Leman v. Goulty*, 3 *T. R.* p. 4.

(*d*) *Brabin v. Trediman*, 2 *Rolle's R.* p. 24.

(*e*) *Buggin v. Bennett*, 4 *Bur. Rep.* p. 2035; *Symes v. Symes*, 2 *Bur.* p. 813 (A.D. 1759); *Sims v. Sims* (1759), 2 *Ld. Kenyon's Cases in K. B.* p. 540; *Blacquiére v. Hawkins*, 1 *Dougl.* p. 378; *Ladbroke v. Crickett*, 2 *T. R.* 649; *Gosling v. Velej*, 12 *Q. B.* p. 390; *Full v. Hutchins*, 2 *Comp.* p. 424.

(*f*) *Hart v. Marsh*, 1 *Nev. & P.* p. 62; *Ibid.* 5 *Ad. & E.* p. 591; *Ibid.* 5 *Dowl. P. C.* p. 424; *Ibid.* 2 *Har. & W.* p. 341.

(*g*) *Full v. Hutchins*, 2 *Comp.* p. 424.

H. VOL. II.

K

CAP. II. PRESCRIPTION.	the application, to show clearly that the Spiritual Court had no jurisdiction. If, therefore, it be doubtful, it is an answer to the application (<i>h</i>).
On granting prohibition ecclesiastical costs cannot be given.	572. The Act of 1 Will. IV. c. 21, s. 1, does not enable the court, where a party has declared in prohibition and succeeded, to grant him his costs incurred in the Ecclesiastical Court (<i>i</i>).
No prohibition after consultation.	573. After a consultation, prohibition may not be granted; except in the case of the judge dying, when his successor may be prohibited (<i>k</i>).
Attachment for disobedience of prohibition.	574. The disobeying of a prohibition is a contempt of the Superior Court that awards it, and is punishable by attachment, which issues against the judge and party, or either, for proceeding after such prohibition, and for which they are subject to fine and imprisonment, according to the discretion of the Superior Court (<i>l</i>).
Even if prohibition be granted improvidently.	575. And even if a prohibition issue improvidently, but is not superseded, a proceeding in breach of it is a contempt (<i>m</i>).
And even against a peer.	576. An attachment for a contempt may be awarded not only against a commoner, but even against a peer of the realm (<i>n</i>).
An attachment was dissolved upon payment of fine.	577. An attachment was granted upon affidavit, that the party had proceeded after a prohibition delivered to him, in a suit for a seat in a church, which the plaintiff claimed by prescription; and on his appearance and examination upon interrogatories, he confessed the matter and was fined five marks (<i>o</i>).

(*h*) *Carslake v. Mapledoram*, 2 *T. R.* p. 475.

(*i*) *Tessimond v. Yardley*, 5 *B. & Adol.* p. 458.

(*k*) *Bowry v. Wallington*, *Latch.* p. 7.

(*l*) *F. N. B.*, *H. & K.* p. 40.

(*m*) *Iveson v. Harris*, 7 *Ves.* p. 251.

(*n*) 21 *Edw. III.*, pt. 7, p. 2; *Bac. Abr.* "Prohibition."

(*o*) *Dr. Wainwright's case*, cited *Bacon's Abr.* "Prohibition" (*M*).

578. And not only an attachment lies for proceeding in the same cause pending a prohibition, but also for instituting a new suit for the same thing. Thus, if a parson libels for tithes, and a prohibition is brought, and he libels for tithes of another year, the first suit not being determined, an attachment shall be awarded (*p*).

CAP. II.
PRESCRIPTION.

Attachment also for instituting new suit for same thing.

579. As prohibition is intended for keeping every court within its proper jurisdiction, the law as to prohibition can only be altered by act of parliament (*q*).

The law can only be altered by act of parliament.

(*p*) Bacon's *Abr.* "Prohibition" (M).

(*q*) Comyn's *Dig.* "Prohibition" (C); 2 *Inst.* p. 601.

PART C.

PRIVATE CHAPELS AND UNCONSECRATED BUILDINGS.

DIVISION a.

a. PRIVATE CHAPELS.*PRIVATE CHAPELS.*

Ordinary has no power over seats in private chapels.

580. It is said that the ordinary has no power over seats in chapels annexed to the houses of noblemen and other laymen (*a*).

"Private Chapels Act, 1871."

581. In "The Private Chapels Act, 1871" (*b*), there was, when the bill was introduced into the House of Commons, a paragraph which prohibited the letting of any seat for hire, or the charge of any fee for admission to the services in any chapel to which a clergyman was licensed by the bishop under the provisions of the act, and without the consent of the incumbent of the parish; but the paragraph dropped out before the bill became an act.

Private chapels bear a resemblance to proprietary chapels.

582. There is, it will be seen, a very remarkable dearth of legal information as to the seats in private chapels; perhaps they may be considered more in the nature of seats in proprietary chapels than in any other ecclesiastical building.

(*a*) 2 Roll's *Abr.* p. 288, citing Wyche's case; Viner's *Abr.* "Prohibition" (G).

(*b*) "The Private Chapels Act, 1871" (34 & 35 Vict. c. 66).

PART C.
PRIVATE CHAPELS AND UNCONSECRATED
BUILDINGS.

DIVISION **b.**

PROPRIETARY CHAPELS.

**b. PRO-
PRIETARY
CHAPELS.**

583. PROPRIETARY chapels are anomalous, being unknown to the constitution of the Church of England, and to the ecclesiastical establishment; and can possess no parochial rights, and the exercise of any such rights would be a mere usurpation (*a*). Proprietary chapels are anomalous, and have no parochial rights.

584. They are mere speculations of the proprietors, probably for a very good purpose, and from very honorable motives, and not merely for the sake of the emoluments arising from letting the pews (*b*); for which, in return, the performance of public service is afforded (*c*). They are mere speculations.

585. If the proprietors, from any cause, cannot let these pews, there is nothing to prevent them, even if the chapel be consecrated, from shutting it up; and, if not consecrated, from converting it to any secular purpose (*d*). If unproductive may be shut up.

586. But it was the opinion of the late Dr. Swabey (answering a case for opinion in 1820) that, strictly, the consent of the ordinary might be necessary to the owners erecting more pews therein; but when erected, the owner (and not the parish) may place persons therein, though still subject to the control of the ordinary, if lawful cause for interference and control should arise. (It is not easy to imagine how such cause could arise) (*e*). But doubt whether ordinary's authority necessary for putting up seats.

(*a*) *Moysey v. Hillcoat*, 2 *Hagg.* p. 46.

(*b*) *Ibid.* p. 50.

(*c*) *Ibid.* p. 57.

(*d*) *Ibid.* p. 50.

(*e*) MS. Opinion.

PART D.

CHURCHES BUILT UNDER ACTS OF PARLIAMENT.

DIVISION a.

a. GENERAL
ACTS.*GENERAL CHURCH BUILDING ACTS.*

Introduction.

587. THE Church of England, after a very lengthened period of somnolent existence, scarcely to be called life, suddenly awoke to discover an appalling amount of spiritual destitution. The first step taken towards a remedy for this state of things was the passing in 1818 of an act for building and promoting the building of additional churches in populous parishes (*a*), followed up by the appointment of church-building commissioners (*b*), to carry the act into operation. The original act has been patched and tinkered a dozen times subsequently by as many other church building acts, and various other quite independent acts have also been passed; the result is a very confused and unsatisfactory mass of material, needing much more than codification. The commission, at first limited to ten years, was continued by subsequent acts up to the end of the year 1857, when its powers, &c. were transferred to the ecclesiastical commissioners (*c*).

588. For the purposes of the Act of 1818, parliament

(*a*) 58 Geo. III. c. 45.

(*b*) By 58 Geo. III. c. 54.

(*c*) 19 & 20 Vict. c. 55.

voted the sum of a million sterling (*d*), and half a million more was added by the Act of 1824 (*e*).

a. GENERAL
ACTS.

589. In a subject so novel to public attention, it would be no matter of surprise to find that principles concentered in ages long past, and subsequently in ignorance of their true character, despised as dark and barbaric, were altogether unnoticed, or if noticed, disregarded. It might, perhaps, be expected that provision would be made that nothing in the acts, or to be done under their authority by the commissioners, should invalidate or avoid any ecclesiastical law or constitution of the Church of England, or destroy any of the rights or powers belonging to any bishop, archdeacon, chancellor, or official, or hinder the exercise of their ecclesiastical jurisdiction as fully, and in like manner, as theretofore (*f*).

General
churchbuilding
a novel subject.

Rights of
bishops were
preserved.

590. But it is a matter of some astonishment to find that in 1818 (the date of the first of the Church Building Acts) the ancient rights of parishioners to the use of their parish church, without payment of rent, were fully recognized; and although to relieve the pressing wants of the moment, a system of appropriation and pew renting was sanctioned, the act contemplated it merely as a temporary measure, and made provision for its diminution and extinction (*g*). A little more consideration of human nature would no doubt have shown that, as a rule, persons who had acquired special privileges were not likely to abandon them voluntarily, or themselves take the necessary steps to restore, at their own loss, the rights of the parishioners at large; and the result has been that in a large number of

Ancient prin-
ciple of
freedom from
rent main-
tained.

(*d*) 58 Geo. III. c. 45, s. 1.

(*e*) 5 Geo. IV. c. 103, s. 1.

(*f*) 58 Geo. III. c. 45, s. 84; 3 Geo. IV. c. 72, s. 36.

(*g*) 59 Geo. III. c. 134, s. 26.

**a. GENERAL
ACTS.**

cases rents, sometimes little more than nominal, have been continued when they ought, in accordance with the spirit and intention of the act, long since to have ceased. Rights or liberties waived or infringed are not easily regained.

Letting seats
intended as
temporary
measure.

591. Although the plan of letting seats at a rent, as a means of supplying the deficiency of funds, was adopted by the earlier Acts as a temporary measure, the right to seats without payment was still further recognized by the Act of 1831 (*f*), which contemplates the building of new churches in which there might be no pew rents, though it still sanctioned them in anticipation of their being frequently necessary.

Limited to a
part.

592. The permission to let seats is limited to a certain proportion of the whole accommodation of a church built under the provisions of the Church Building Acts, a proportion which varies under different acts, and various claims have first to be considered.

Plan of this
part.

593. We commence with a list of the Church Building Acts and those Public General Acts which affect pews: next show what rights are reserved; and then what are the requirements as to free seats. Next as to the letting, and the appropriation of the rents, and under what circumstances they cease. And conclude with the rights of the seat-holders and their cessation.

594. Division **b** refers only to churches and chapels built under local and private Acts, each independent of the others and of the general law. Consequently every case is governed by its own Act, and few points decided affect them at large.

(*f*) 1 & 2 Will. IV. c. 38, s. 2.

595. *List of General Church Building Acts.*a. GENERAL
ACTS.List of Church
Building Acts.

1818 . . .	58 George III. . . .	c. 45.
1819 . . .	59 George III. . . .	c. 134.
1822 . . .	3 George IV. . . .	c. 72.
1824 . . .	5 George IV. . . .	c. 103.
1827 . . .	7 & 8 George IV. . . .	c. 72.
1831 . . .	1 & 2 William IV.. . .	c. 38.
1832 . . .	2 & 3 William IV.. . .	c. 61.
1838 . . .	1 & 2 Victoria . . .	c. 107.
1839 . . .	2 & 3 Victoria . . .	c. 49.
1840 . . .	3 & 4 Victoria . . .	c. 60.
1843 . . .	6 & 7 Victoria . . .	c. 37.
1844 . . .	7 & 8 Victoria . . .	c. 56.
1844 . . .	7 & 8 Victoria . . .	c. 94.
1845 . . .	8 & 9 Victoria . . .	c. 70.
1846 . . .	9 & 10 Victoria . . .	c. 68.
1846 . . .	9 & 10 Victoria . . .	c. 88.
1848 . . .	11 & 12 Victoria . . .	c. 37.
1851 . . .	14 & 15 Victoria . . .	c. 97.
1855 . . .	18 & 19 Victoria . . .	c. 127.
1856 . . .	19 & 20 Victoria . . .	c. 104.
1860 . . .	23 & 24 Victoria . . .	c. 142.
1869 . . .	32 & 33 Victoria . . .	c. 94.

596. Nothing in the acts or done under their authority by the commissioners is to invalidate or avoid any ecclesiastical law or constitution of the Church of England, or to destroy any of the rights or powers belonging to any bishop, archdeacon, chancellor or official; but they may at all times exercise ecclesiastical jurisdiction as fully and in like manner as theretofore (*g*).

General rights
of bishops re-
served by the
acts.

597. Before the consecration of any church or chapel under the original Church Building Act, a pew sufficient

Seats for
minister and
family.

(*g*) 58 Geo. III. c. 45, s. 84; 3 Geo. IV. c. 72, s. 36.

**a. GENERAL
ACTS.**

to hold at least six persons is to be set apart in the body or ground floor near the pulpit, for the use of the minister and his family. Also other seats, to contain at least four persons, are to be set apart in some other convenient situation, and not among the free seats, for the use of the minister's servants; and no rent is to be paid for any of these sittings (*h*). There is here an evident reminiscence of the ancient right of the parson to the chief seat.

Pews for
church-
wardens.

598. Proper pews are to be assigned and provided in every church and chapel, for the use of the church or chapelwardens (*i*).

Rights trans-
ferred from
former to sub-
stituted church.

599. When a chapel is converted into a parish church, and the former church becomes a chapel (the endowments being transferred), the rights of persons holding pews rent free by faculty or prescription in the former parish church are not lost but transferred (*j*).

Commission to
consider rights
transferred to
substituted
church.

600. Upon the substitution of a new church for an old one in the same parish and the transfer thereupon of parochial rights, the bishop at any time within six months of such substitution may, on his own mere motion, and, if required by any person claiming to hold a pew or seat free of rent, by faculty or prescription, in the old or existing church, is required to issue a commission, under his hand and seal, to two incumbents of parishes within the arch-deaconry containing the old church and two laymen nominated for this purpose by the churchwardens of the old church and not claiming to hold any such pews or seats (*k*).

What bishop
has jurisdic-
tion in
chapelry.

601. As regards a chapelry (now a parish) formed out of parts of contiguous parishes, even though previously wholly or in part within any exempt or peculiar jurisdic-

(*h*) 58 Geo. III. c. 45, s. 75.

(*i*) 59 Geo. III. c. 134, s. 30.

(*j*) 1 & 2 Vict. c. 107, s. 18.

(*k*) 8 & 9 Vict. c. 70, s. 1.

tion, the chapel becomes subject to the jurisdiction of the bishop and archdeacon in whose diocese and archdeaconry the altar of the chapel of the chapelry is locally situate (*l*).

a. GENERAL
ACTS.

602. A commission was issued by the chancellor of a diocese, subsequent to certain alterations and additions to a parish church, to inspect the sittings and settle all claims of the inhabitants in a just and equitable manner, having regard to any existing right to sittings there, whether possessory or by faculty or prescription, and with the distinct understanding that no person who had ceased to be an inhabitant and occupier of premises in the parish should retain possession; and to certify the court by a given day in order that the court might judge of and (as justice should direct) ratify and confirm the same and decree the disposition and allotment of the seats accordingly. Such a commission is not illegal, though, perhaps, the terms in which the power was conferred were somewhat large. As the chancellor retained the final adjudication upon the award, in his own hands, the commission was properly issued (*m*).

Form of commission granted in respect to re-fitted church.

603. In this case, however, no question was raised as to the authority of the bishop to cite persons claiming seats to prove their title either before himself or a commission. The Act of 1844 (*n*), authorizing the issue of an analogous commission, refers only to the case of the substitution of a new church for an old church, and not at all to possessory rights. The absolute appearance of claimants would act as a submission to the jurisdiction.

But act refers only to substituted church.

604. The commissioners appointed under the Act of 1844, or any three or more of them, of whom the archdeacon must be one, are at their earliest convenience to examine into such claims, having previously given fourteen

Commissioners to examine into claims.

(*l*) 59 Geo. III. c. 134, s. 7; 2 & 3 Will. IV. c. 61.

(*m*) *Craig v. Watson*, Arches Ct. (Sir R. J. Phillimore), 30 Nov. 1870, unrep.

(*n*) 8 & 9 Vict. c. 70, s. 1.

**a. GENERAL
ACTS.**

And bishop
may assign
equivalent
seats in new
substituted
church.

Persons ag-
grieved by
commissioners
may appeal to
bishop.

Under circum-
stances fresh
evidence per-
mitted on
appeal to
Archies.

Rights to be
specified in
scheme for
division.

days' notice, by affixing a copy of their commission on the door of the new church, together with a notice signed by the archdeacon, specifying the day, time and place on which such examination is to be made (*o*).

605. After making an examination into these claims, the commissioners, or the majority of them, are, under their hands, to transmit in writing to the bishop, the names and residences of those persons who have substantiated claims to such pews or seats; and the bishop, if satisfied, is to assign, under his hand and seal, to such persons respectively, convenient pews or seats in the new church, to be held and enjoyed in the same manner as those to which they had been entitled in the old church (*o*).

606. Any person aggrieved by the finding of such commissioners may appeal to the bishop of the diocese, who may, if he think fit, allot him seats in the new church (*o*). This the bishop might have done, under the ordinary theory of a bishop's authority, without special parliamentary powers.

607. Upon appeal from the chancellor of a diocese who had confirmed the settlement, made under a commission by him appointed for the purpose, of all claims of the parishioners to sittings in a parish church, the Archies Court, upon the representation that one of the objectors had in the court below acted without legal advice, and that his rights had been imperfectly set forth, allowed fresh evidence to be taken (*p*).

608. Upon the division of a parish under the New Parishes Act of 1856, the rights of pewholders are to be specified in the scheme ratified by order in council (*q*).

(*o*) 8 & 9 Vict. c. 70, s. 1.

(*p*) *Craig v. Watson*, unrep.

(*q*) 19 & 20 Vict. c. 104, s. 25.

609. The original Church Building Act (1818) provides that one-fifth part of the whole of the sittings in any church or chapel, built wholly or in part out of or on money raised on the credit of rates, shall be free from rent or assessment. They are to be marked with the words "Free Seats" (*r*).
610. The Act of 1819 directs that one-half of the additional accommodation gained by rebuilding a church under that act shall be free and open (*s*).
611. In order to secure the patronage conferred by the Act of 1831 upon persons building or endowing, it is required that one-third of the whole should be free (*t*); by a subsequent section (*u*) the commissioners may direct any church or chapel built by private individuals, under the provisions of the Church Building Acts, shall be subject to the provisions of this act.
612. By the Act of 1838 it is left to the bishop to determine whether the one-third part of the sittings required in the former act to be free, should thereafter be free, or whether the same, or any part thereof, should be let at such low rents as the bishop should from time to time direct (*x*).
613. Where a new or substituted church has been built wholly or in part out of funds granted by the commissioners, and a transfer has been made, the rents shall only be fixed by the commissioners for the number of seats exceeding the number in the old or existing church (*y*).
614. Where in a new parish or district it appears to the commissioners that sufficient funds cannot be obtained

a. GENERAL ACTS.

Proportion of free seats. Originally one-fifth in church built out of rates.

Half seats gained by rebuilding to be free.

One-third of whole must be free to secure patronage.

Bishop may direct them to be let at low rents.

But rents only on seats in excess of former number.

Originally one-third of church of united parishes.

(*r*) 58 Geo. III. c. 45, s. 75.

(*s*) 59 Geo. III. c. 134, s. 40.

(*t*) 1 & 2 Will. IV. c. 38, s. 2.

(*u*) Ibid. s. 22.

(*x*) 1 & 2 Vict. c. 107, s. 1.

(*y*) 8 & 9 Vict. c. 70, s. 1.

a. GENERAL ACTS.

One-half of church of new parish.

from other sources and they order that rents be fixed, at least one-half of the whole number of sittings in the church shall be free; and it must be shown to their satisfaction that such free sittings are, with respect to position and convenience, as advantageously situated as the others (*a*).

615. In the case of the church of contiguous parishes, united under an act passed in 1855 (but limited to a period of five years), not less than one-third of the seats are to be free and unappropriated (*b*).

Now one-half.

616. On the expiration of this act in 1860, another and permanent act was passed, which provides that at least half of the seats in the church of the united parishes shall be unappropriated (*c*).

One-fourth at extra service.

617. In the case of a third or additional service being appointed by the bishop under power conferred by the Act of 1818, at least one-fourth of the seats must be kept free (*d*).

None let under Acts of 1843 and 1844, till altered in 1856.

618. The New Parishes Act (1843) (*e*), and its Amendment Act (1844) (*f*), which require a certain endowment, contain no provision for letting seats; but the power of fixing rents (where it shall appear that sufficient funds cannot be provided from other sources, but not otherwise), is imported into them by the Act of 1856 (*g*) in respect to churches to which a district is assigned after the date of the last-mentioned act, on the 29th July, 1856.

Then one-half of whole, and equal in all respects to others.

619. Where rents are ordered by the commissioners to be adopted in a church built under the Acts of 1843 and 1844, one-half at least of the whole number of sittings in the church shall remain free; and it must be shown to the

(*a*) 19 & 20 Vict. c. 104, s. 6.

(*b*) 18 & 19 Vict. c. 127, s. 13.

(*c*) 23 & 24 Vict. c. 142, s. 28.

(*d*) 58 Geo. III. c. 45, s. 65.

(*e*) 6 & 7 Vict. c. 37 (commonly called "Peel's Act").

(*f*) 7 & 8 Vict. c. 94.

(*g*) 19 & 20 Vict. c. 104, s. 6 (commonly called "Blandford's Act").

satisfaction of the commissioners that such free seats are well placed and convenient as those for which it is proposed to fix rents (*h*).

a. GENERAL
ACTS.

620. The other seats (not exceeding the proportions mentioned) are to be let by the churchwardens, and it is their duty to collect the rents for such seats (*i*).

Wardens to
collect rents.

621. Where under the authority of the provisions of the act the bishop has required that a third service in the day be performed by a clergyman specially appointed for the purpose, he may require the churchwardens to let for such third service, such proportions of the pews (not being pews held by faculty or prescription) and at such rates as, in the bishop's opinion, may be sufficient to afford a competent salary to such clergyman; but reserving such number of free sittings, being at least one-fourth, as may seem expedient to the bishop (*k*).

Where bishop
orders a third
service, seats to
be let inde-
pendently of
general allot-
ment.

622. In churches built under the original Church Building Act, the commissioners are to fix the rents of the pews (*l*).

Rents fixed by
commissioners.

623. Under the Act of 1819 all pew rents are payable in advance. One year's rent is to be paid on admission to the pew or seat, if given at Lady Day or Michaelmas; but if at an intermediate period, then a proper proportion, in addition to a half-year's rent, and afterwards a half-year's payment in advance. But such pew or seat is to be forfeited by the discontinuance of such payment in advance for two successive half-years (*m*).

All rents pay-
able in ad-
vance.

624. They are to be offered in the first instance to parishioners. All subscribers, who are parishioners, to

Sittings offered
to parishioners
according to

(*h*) 19 & 20 Vict. c. 104, s. 6.

(*i*) 58 Geo. III. c. 45, s. 73.

(*k*) Ibid. s. 65.

(*l*) Ibid. s. 63.

(*m*) 59 Geo. III. c. 134, s. 32.

**a. GENERAL
ACTS.**

amount or
order of sub-
scription.

Subscribers to
building a
church may be
discharged
from rents for
time of life,
with power of
assignment.

Notice of
vacancies to be
given.

Those unlet
after fourteen
days, let to non-
parishioners.

any church or chapel built under 58 Geo. III. c. 45, have choice of pews, at the rates fixed by the commissioners, in the *order* of their *amount* of subscriptions; and in case of subscribers to the same amount, then in the *order* of their subscriptions (*n*).

625. The church-building commissioners may discharge any subscribers towards building any church or chapel, or towards purchasing their sites, wholly or in part from the payment of pew rents for a limited time, or for life, in such proportion to the amount of their respective subscriptions as the commissioners shall see fit, and allow such subscriber, if he remove from the parish, to assign the remainder of such term to any other parishioner inhabiting the parish (*o*). Doubts which had been entertained as to whether the power applied to subscribers to sites as well as subscribers to building, were set at rest by the Act of 1831 (*p*).

626. Where the pew rents have been fixed, notice is to be given for six successive weeks, at the end of each year, of all the pews which will be vacant at the commencement of the year following, and the same is to be affixed in writing upon the doors of the church or chapel and vestry room respectively (*q*).

627. All pews which are not taken at the rent fixed upon may, within fourteen days after the commencement of the ensuing year, be let to any inhabitants of adjoining parishes, where the church accommodation is insufficient, at the same rent, and for any term not exceeding a year. But at the end of every successive year each pew so rented is to be inserted in the list of vacant pews, and the inhabit-

(*n*) 58 Geo. III. c. 45, s. 76.

(*o*) 59 Geo. III. c. 134, s. 33.

(*p*) 1 & 2 Will. IV. c. 38, s. 21.

(*q*) 3 Geo. IV. c. 72, s. 24.

ants of the parish, to which the church belongs, are again to have the preference (*r*). a. GENERAL ACTS.

628. But the churchwardens *may*, with consent in writing of the incumbent, the patron and the bishop, alter such yearly rents; and in such case a new schedule of rents, and of the pews or seats upon which they are charged, must be signed by the churchwardens, incumbent, patron, and bishop, and be deposited with the deed of consecration (*s*). They may, however, be *required* to make such alterations by the bishop, with consent of the incumbent and patron, and in case the pew rents shall have been assigned to the parish, then with consent of the vestry (*t*). Wardens may alter rents with consent or at requirement of bishop.

629. In the case of churches or chapels built under the Act of 1831, the seats are to be let by the church or chapelwardens, or by some person appointed by the trustees, or the persons building or endowing the church or chapel, at a scale approved by the bishop, which may be altered from time to time as occasion may require (*u*). Wardens or trustees may let under Act of 1831.

630. Where the church of a consolidated chapelry has been built, wholly or in part, by means of funds supplied by the church-building commissioners, they, with consent of the bishop, may apply to such church the provisions of the Acts of 1818 and 1819, touching the reservation of pew rents (*x*). Provisions of 1845 applicable to consolidated chapelry under 1818 and 1819.

631. In all cases not previously provided for, churchwardens, who are to be appointed in every district or consolidated chapelry, are to receive pew rents and recover arrears of such rents (*y*). Otherwise the wardens to receive rents.

(*r*) 3 Geo. IV. c. 72, s. 24; 1 & 2 Will. IV. c. 38, s. 4.

(*s*) 58 Geo. III. c. 45, s. 78.

(*t*) 58 Geo. III. c. 45, s. 78; 59 Geo. III. c. 134, s. 81.

(*u*) 1 & 2 Will. IV. c. 38, s. 4.

(*x*) 8 & 9 Vict. c. 70, s. 11.

(*y*) Ibid. s. 6.

**a. GENERAL
ACTS.**

Or bringing an
action.

Means to en-
force payment
of rent in
arrear by let-
ting or selling.

To be let or
sold to
parishioners
only, and in
default to
others by
private con-
tract.

Except for
arrears, and
then with op-
tion of auction.

632. The churchwardens may, at their discretion, sue for and recover the rent in arrear by an action of *debt* or an *action on the case*, for the use and occupation of such pew or seat, to be brought against the owner or occupier in the name of "the churchwardens of the church or chapel of [*describing the church or chapel*];" and no such action abates by reason of the death, removal, or going out of office of any churchwardens (*a*).

633. Where the rent of any pew or seat is unpaid for the space of three months next after it is due, and notice in writing, demanding payment, has been given to the owner or occupier, then the churchwardens may either enter upon and hold such pew or seat, or let it to any other person, as they think proper, until the rent in arrear and all costs and charges have been satisfied. They have also the option of selling such pews or seats by public auction to the best bidder, and paying the rent in arrear out of the price; and after deducting all reasonable expenses, they are to pay any overplus to the respective owners or occupiers of such pews or seats (*a*).

634. The churchwardens are neither to let nor sell any pews and seats, except to parishioners, during the time they shall continue to inhabit the parish; and any sale of any pew or seat (in default of its being applied for by a parishioner, or otherwise in default of payment of rent) is subject to the reserved rent fixed under the provisions of 1818 and 1819, and is to be sold by private contract, and not by public auction (*b*). But with an exception in the case of rent being in arrear (under the Act of 1818), when the churchwardens have also the option of selling such pews or seats as mentioned in paragraph 633.

(*a*) 58 Geo. III. c. 45, s. 79.

(*b*) 59 Geo. III. c. 134, s. 32.

635. If persons are willing, in preference to pew rents, to subscribe for the salary of a curate for a third service, every subscriber, being a parishioner, shall have the option of any pew (not held by faculty or prescription) for such service, according to the amount, and in the order of subscription, if any have subscribed an equal amount; and to continue to hold such pew so long as he continues to subscribe (*c*).

a. GENERAL ACTS.

Preference to subscribers to third service, according to amount and order.

636. The churchwardens may, with consent of the commissioners, borrow money towards building a church or chapel, or purchasing a site for it, and defraying expenses, upon the credit of the pew rents, subject to the payment of the clergyman and clerk's stipends and other expenses (*d*).

Money for building may be borrowed on credit of pews.

637. The commissioners, with consent of the bishop, are to assign out of the pew rents a proper stipend to the clergyman of such church or chapel, regard being had to the extent and population of the district attached to it, the cost of procuring a residence, and all other circumstances. They are also to assign a salary to the clerk of such church or chapel. If the commissioners and bishop cannot agree as to the amount of any such stipend, it is to be settled by the archbishop of the province (*e*).

Rents to be applied to stipend of clergyman and salary of clerk.

638. The commissioners may from time to time direct that the rents of the pews in any church or chapel within the provisions of the Church Building Acts, be assigned to the parish or district and received by the churchwardens, who thereupon are required to pay the clergyman and clerk their stipends (*f*).

Rents may be assigned to wardens for the purpose.

(*c*) 58 Geo. III. c. 45, s. 66.

(*d*) 59 Geo. III. c. 134, s. 27.

(*e*) 58 Geo. III. c. 45, ss. 63 & 64; 8 & 9 Vict. c. 70, s. 11.

(*f*) 59 Geo. III. c. 134, s. 26; and by 19 & 20 Vict. c. 104, s. 6, where the funds from other sources are insufficient.

a. GENERAL ACTS.

Wardens only liable for net amount realized.

Rents for like purpose in church built by individuals.

On substitution, rents to pay stipends for both churches.

Wardens liable only for amount of rents received by themselves.

Surplus rents (after payment of stipends) to go to repay loan, for repairs and in aid of church rate.

639. But the parish is in no case to be answerable to the minister or clerk for any greater sum than the pew rents of that year realize (*h*).

640. Where a church is built by private individuals, under the Act of 1824, the usual proportion of free seats is to be set apart; and a competent salary for the spiritual person who may officiate therein, as well as other expenses incident to the performance of divine service, and for maintaining such church, are to be provided out of the pew rents after consecration (*i*).

641. The commissioners may provide for the maintenance of the minister and clerk of both a substituted church and the church for which it was substituted, out of pew rents of either of such churches (*k*).

642. When, under the Acts of 1818 and 1819, the commissioners have made an order assigning rents to be received for the purpose of those acts, the minister is entitled to receive from the churchwardens (as soon as received by them), towards his stipend, what they have received (subject to some prior charges) for pew rents; but only in respect of quarters expired, and for which the stipend has become due. He is not entitled to receive from the present churchwardens the balance of rents received by the late churchwardens and not paid over to them (*l*).

643. The surplus of pew rents, after payment of stipend to the clergyman and clerk and other expenses, may, with consent of the commissioners, be applied towards the repayment of money advanced towards building the church or

(*h*) 59 Geo. III. c. 134, s. 26; and by 19 & 20 Vict. c. 104, s. 6, where the funds from other sources are insufficient.

(*i*) 5 Geo. IV. c. 103, s. 10.

(*k*) 1 & 2 Vict. c. 107, s. 18.

(*l*) *Lloyd v. Burrup & anor.*, 19 *Law Times Rep.*, *Ex.* p. 696.

chapel, purchasing its site, keeping it in repair, or other expenses. The residue of such pew rents are to be applied as above mentioned, or in aid of the church rate, if the commissioners think fit (*m*).

a. GENERAL
ACTS.

644. Any surplus of pew rents, after payment of such stipend and other expenses, is, except in certain cases (mentioned in the next section), to be invested in government securities, in the names of trustees to be appointed by the bishop of the diocese, to accumulate and form a fund for building or purchasing a house of residence for the clergyman; and after such purpose has been completed, then it is to be devoted either to the augmentation of the clergyman's stipend, the reduction of pew rents, or the increase of accommodation in the church, as the bishop may direct (*n*).

Unemployed surplus to be invested for fund for parsonage; then to augment stipend, reduce rents or increase accommodation.

645. The next section provides that the surplus rents after payment of the stipend and expenses may, if the commissioners think it expedient, be charged with the repayment of any loan for the cost of the church or site, and for defraying all expenses relative thereto, and for keeping the church in repair; and the then remaining residue be applied as before provided, or in aid of the church rate (*o*).

Or towards repayment of loan or for expenses, repairs or church rate.

646. The principle of a gradual cessation of rents had become lost sight of when the Act of 1831 passed. It empowers the payment over of the residue after an annual reservation for repairs, and payment of clerk's salary, beadles, pew-openers, and incidental expenses, to the minister for his own use by way of stipend in addition to the dividends of funded endowment (*p*).

Not to reduction of rents, but to augment stipend, by Act of 1831.

(*m*) 59 Geo. III. c. 134, ss. 26, 27.

(*n*) Ibid. s. 26.

(*o*) Ibid. s. 27.

(*p*) 1 & 2 Will. IV. c. 38, s. 16.

a. GENERAL ACTS.

Minister's stipend may be augmented, unless invested for parsonage or subject to a loan.

647. The commissioners, with the consent, under seal, of the bishop, are empowered to augment, out of the surplus pew rents, the minister's stipend (in respect to which reservation out of pew rents has been made under the Act of 1818), by a further assignment of part or the whole of the surplus pew rents, accrued or to accrue; such assignment to be registered in the diocesan registry. But this power is not to be exercised where the surplus rents have been invested on government securities in trustees' names, to accumulate for cost of a house of residence; or where charged by the commissioners with repayment of loan and interest for the building of the church or chapel, or cost of site, expenses or repairs (*q*).

In new parishes to be applied to repairs and expenses, minister and endowment.

648. When in default of sufficient funds from other sources the commissioners make an order for pew rents in a church built under the Acts of 1843 and 1844, the proceeds not otherwise appropriated by law, are to be applied towards the repair and maintenance of the church, and the maintenance of the minister and the services, and the endowment of the church, in such manner as shall be specified in their order, and to no other uses (*r*).

Repairs of pews part of repair of church.

649. The expense of repair of pews is necessarily included in the expense of repair of the church; and for this the pew rents are liable under the Act of 1819 (*s*), and various subsequent acts.

And chargeable to their own districts.

650. The repairs of all district churches or chapels, built under the Church Building Acts, when not otherwise provided for, are to be made by the districts to which they respectively belong, in like manner as in case of repairs of churches by parishes; and every such district is to be

(*q*) 3 & 4 Vict. c. 60, s. 5.

(*r*) 19 & 20 Vict. c. 104, s. 6.

(*s*) 59 Geo. III. c. 134, s. 27.

deemed in law a separate and distinct parish for that purpose (*t*).

a. GENERAL
ACTS.

651. Every such district is further to remain, for twenty years after consecration, subject to the repair and the incidental expenses (*u*) of the original parish church, and to be deemed during that time, and no longer, a part of the parish for the purpose of such repairs and rates for the purpose (*x*).

Districts also liable for twenty years to repair of original parish church.

652. In any case where any division of a parish divided under the provisions of the Acts of 1818, 1819 and 1822, shall be again divided, and a church or chapel built or appropriated within, and to the use of, such new division, the Church Building Commissioners, by any instrument under their seal, may declare that all liability to any repairs of the church or chapel of the division, from which such new division shall have been so made, shall cease from the period specified in such instrument: and that the only remaining liability be for its own repairs, and its share of the repair of the church of the original parish for the residue of the twenty years during which the old division was liable to share in such repair (*y*).

In case of further sub-division, liability for repair by last of intermediate parish church may be limited.

653. All chapels acquired and appropriated, or built, or enlarged, or improved, under the provisions of the Acts of 1818, 1819 and 1822, or under any local acts in which no provision has been made for such purpose, in aid of the churches of the parishes or places in which they may be situated (whether any district of any such parishes may have been assigned or not to such chapels as belong thereto for ecclesiastical purposes), are to be repaired by the

Chapels in aid to be repaired by the parish.

(*t*) 58 Geo. III. c. 45, s. 70.

(*u*) *Chesterton & H. v. Farlar*, 1 *Curt.* 356.

(*x*) 58 Geo. III. c. 45, s. 71.

(*y*) 3 Geo. IV. c. 72, s. 21.

a. GENERAL ACTS.

Money for purpose directed to be raised by church rate, but compulsory rates since abolished.

respective parishes, places at large, or districts to which such chapels may belong (*z*).

654. The act provided that rates were to be raised, levied and collected for that purpose, in like manner in every respect as for the repair of the churches of such parishes and places, and all the laws then in force for making, levying and collecting rates for the repair of churches were to be applied and put in force for the raising, making, levying and collecting such rates for the repairs of such chapels (*z*). But this provision was from and after the 31st July, 1868, practically abrogated by the Act for the Abolition of Compulsory Church Rates for Ecclesiastical Purposes (*a*).

Individuals building and endowing must provide fund for repairs.

655. When a church or chapel is about to be built and endowed by private individuals, under the provisions of the Acts of 1831 and 1838, they must, as a preliminary step, declare their intention of providing a fund for its repair, namely, one sum, equal in amount to 5 per cent. of the original cost of such church or chapel, to be secured on lands or money in the funds, and also 5 per cent. upon the sum so raised, to be reserved annually out of the pew rents (*b*).

Or a perpetual rent-charge.

656. A perpetual rent-charge, equal in value to the repair fund so directed to be secured, may be made upon lands or other hereditaments. And the incumbent of such church or chapel, immediately after it has been consecrated and a district assigned to it, may take to himself and his successors a transfer of such rent-charge, upon the same trusts and for the same purposes as the repair fund may be held by trustees (*c*).

(*z*) 3 Geo. IV. c. 72, s. 20.

(*a*) 31 & 32 Vict. c. 109.

(*b*) 1 & 2 Will. IV. c. 38, s. 2; and 1 & 2 Vict. c. 107.

(*c*) 3 & 4 Vict. c. 60, s. 15.

657. The Church Rate Abolition Act contains a provision that in cases where money had been borrowed on the security of church rates and was still owing, the making and enforcing payment of church rates for the purpose of repayment should temporarily continue (*d*). But in all other cases compulsory rates ceased from the date of the passing of the act (31 July, 1868), and the burthen of repairs was left to rest solely on the pew rents and endowment fund. The act consequently operates to an extension of the time during which pew rents may be levied.

A. GENERAL ACTS.

Since abolition of church rates, pew rents must bear repairs.

658. The trustees or wardens may sell vaults for burial under the church or chapel, or in the adjoining ground, and invest the proceeds as a fund to supply deficiencies, if the amount produced by the rents be insufficient (*e*).

Vaults sold in aid of funds.

659. When a permanent provision in land or money, in lieu of pew rents, to the satisfaction of the commissioners and bishop, is secured, and the pew rents have not been assigned or appropriated under any local act, the commissioners may, with consent of the bishop, by an instrument under their and his seals respectively, order that such rents shall thereupon cease, either wholly or in part (save as regards arrears); and the seats so exempted from rent shall be at the disposal of the churchwardens in like manner as the seats in an ancient parish church (*f*).

On sufficient permanent endowment, rents to cease.

660. In the case of churches built under the Acts of 1843 and 1844, to which the power of charging rents was extended by the Act of 1856, a similar provision is made, that upon a permanent endowment being provided, the commissioners may, with consent of the bishop, by an instrument under their seal, make an equivalent reduction in the total amount of the pew rents, either by a general

In new parishes either rents reduced or part entirely freed.

(*d*) 31 & 32 Vict. c. 109.

(*e*) 5 Geo. IV. c. 103, s. 15.

(*f*) 14 & 15 Vict. c. 97, s. 1.

**a. GENERAL
ACTS.**

reduction of rate, or by freeing certain specific pews: provided that no loan obtained on the security of the rents remains unpaid (*h*).

But instrument
may be
rescinded.

661. With like consent the commissioners may rescind the whole or part of the provisions of any such instrument, but only with consent of the incumbent during his life, if it affect his emolument (*i*).

When endow-
ment obtained,
pew rents to
cease wholly or
in part.

662. When any body or person endows with a provision of land or money, in lieu of pew rents, to the satisfaction of the commissioners and bishop, any church for which pew rents had been previously fixed by the commissioners, and the rents had not been assigned or appropriated under any local act, the commissioners may, with consent of the bishop, order that such rents shall cease either wholly or in part; and the seats exempted from rent shall be at the disposal of the churchwardens as in an ancient parish church (*k*).

Under Act of
1824 pew-
holders elect
trustees, who
have patronage
of church.

663. Under the Act of 1824, where the existing church accommodation in any parish, chapelry, township or extra-parochial place is insufficient for one-fourth of the inhabitants, persons may subscribe to build or buy a church or chapel, to continue under the management of trustees elected by such pew-holders as have subscribed at least 50*l.*; and the trustees have the nomination of a clergyman for the next two turns, or any number during forty years (*l*).

Proposal for
building to
state propor-
tion of free
seats.

664. The preliminary proposal must state the number or proportion of free seats, when part of the funds is advanced by the commissioners, and offer out of the rents of the other seats to provide a competent salary for the

(*h*) 19 & 20 Vict. c. 104, s. 7.

(*i*) Ibid. s. 8.

(*k*) 14 & 15 Vict. c. 97, s. 1.

(*l*) 5 Geo. IV. c. 103, ss. 5, 6, 7, 12.

clergyman, and for expenses of service and maintenance of the building (*m*).

665. The Act of 1831 requires (amongst other things) that the bishop should be supplied with a certificate, signed by an architect or surveyor and attested by two respectable householders in the parish, to the effect that the existing churches and chapels do not afford by actual admeasurement accommodation for more than one-third of the inhabitants (*n*).

666. But if the person or persons who build the church also endow it, to the satisfaction of the commissioners, with lands or monies exclusively or in addition to the pew rents or other profits arising therefrom, the commissioners may declare the right of nominating the minister to be for ever in such person or persons and their heirs, assigns and appointees (*o*). But the patronage shall not be vested in more than five trustees, unless the commissioners have, previous to 15th October, 1831, sanctioned a larger number of trustees, or such patronage shall pass by descent to coparceners, or by gavelkind or otherwise (*p*).

a. GENERAL ACTS.

Persons building a church to produce certificate of insufficient accommodation.

Unless they endow either with or without pew rents; and then they have patronage.

Trustees to fix rents, subject to bishop: preference of letting to parishioners.

Renters of pews (under Act of 1831) to elect one warden.

667. The scale of rents is to be fixed by the trustees or person who builds or endows, and approved by the bishop, and may be altered in like manner: in the yearly letting by the churchwardens a preference is to be given to parishioners (*q*).

668. Renters of pews in a church or chapel, built under the Act of 1831, are to elect one churchwarden, whose duty, jointly with the other who is chosen by the incumbent, is to receive the rents and pay stipend, salaries and

(*m*) 5 Geo. IV. c. 103, s. 10.

(*n*) 1 & 2 Will. IV. c. 38, s. 3.

(*o*) 7 & 8 Geo. IV. c. 72, s. 3.

(*p*) 1 & 2 Will. IV. c. 38, s. 5.

(*q*) Ibid. s. 4.

**a. GENERAL
ACTS.**

Doubts as to
power of re-
taining seats
after beginning
of service.

Lease deter-
mines on
lessee be-
coming non-
parishioner.

Lease deter-
mines on
lessee leaving
parish, or by
non-user.

Rents in
chapel of ease
cease on its
becoming dis-
trict chapel.

expenses; and in default of payment of rents to sell the seats by auction or otherwise (*s*). It is not specified that either of the persons chosen and elected as churchwardens should be inhabitants of the parish or district.

669. Doubts have been often entertained whether, in the event of any persons, to whom seats are let, not occupying them at the beginning or at any specified part of divine service, the seats can be made available for other persons during that or the remainder of that service; but the question seems never to have been tried.

670. Where an inhabitant, having a lease of a pew or sitting in a church for a longer term than a year, ceases to be an inhabitant of the parish, or discontinues attendance at church for a year, then such lease is to determine at the expiration of the then current year, and the pew may again be let in manner above described (*t*).

671. In case of lease of a pew to an inhabitant of the parish, if he cease so to be, or discontinue attendance at the church for a year, his interest in the pew ceases and determines, and the pew may be let again (*t*).

672. A chapel vested by deed in 1840 in trustees as a chapel of ease, with permission to the vicar and churchwardens to let the pews, and for the churchwardens to apply the rents towards expenses and to pay the balance to the vicar, became, by order in council in 1860, a district chapel with right of performing marriages, &c., the fees for which were to belong to present vicar for life and afterwards to the minister of the chapel: but no mention was made in the order about pew rents. It was held that the effect of the order was to withdraw the chapel from the purposes of the trust deed, and constitute it a benefice;

(*s*) 1 & 2 Will. IV. c. 38, s. 16; 8 & 9 Vict. c. 70, s. 7.

(*t*) 3 Geo. IV. c. 72, s. 25.

and to deprive the vicar and churchwardens of all right to receive the pew rents (*u*). *Quære*, whether after the creation of a district chapelry the pews could lawfully be let at all (*x*).

a. GENERAL
ACTS.

673. A gradual restoration of the system of freedom of seats is contemplated in the Act of 1822, whereby it is provided that the Church Building Commissioners may, with consent of the owners, transfer all rights in any pews in an existing church, belonging to persons in the new district, to any church or chapel of such district built under the provisions of the Church Building Acts, for the purpose of increasing the number of free seats in the church from which such rights may be transferred. Every such transfer shall state under what title the pew was held, and shall suffice without any faculty or other instrument, and shall be registered in the registry of the diocese, and a duplicate deposited in the chest of the church or chapel in which such pew is so assigned (*y*). No greater right can be given in the new church than was formerly possessed in the old church.

Owners may
transfer all
their rights to
increase free
seats.

674. And greater facilities are afforded for the same object by the Act of 1869. Whenever by any public or private act of parliament, or by any deed, the sittings or any of them in any church or chapel, whether consecrated or unconsecrated, are subject to any trust as to their grant, demise, sale or disposal, or are private property for any estate whatsoever, the trustees of such church or chapel, or other the person exercising powers of grant, &c., or possessing any rights of ownership by reason thereof, or any person to whom such sittings belong, either with or without consideration, may surrender to the bishop, or

Facilities for
surrender.

(*u*) *Fitzgerald v. Fitzpatrick*, *Law J. Rep.*, 33 *N. S.*, *Chanc.* p. 673.

(*x*) *Ibid.* p. 670.

(*y*) 3 *Geo. IV.* c. 72, s. 23.

**a. GENERAL
ACTS.**

To be by deed
and registered.

And former
rights and
obligations
cease.

Sittings then
vest in bishop
till consecra-
tion of build-
ing; then be-
come as seats
in old parish
church.

Other rights
cease except
patronage.

the Ecclesiastical Commissioners, all rights of ownership, grant, demise, sale, disposal, or other right whatsoever they may have in such sittings (z).

675. Every such surrender must be by deed executed by all parties thereto, including the bishop and patron, and registered in the diocesan registry (a).

676. Upon such surrender the trusts or rights of ownership and the obligations affecting such sittings, under such act of parliament or deed, shall at once and *ipso facto* determine and be thenceforth void (b).

677. Such sittings thereupon, to the extent of the rights or powers expressed to be surrendered, become subject to the same laws as to rights and property therein as the pews and sittings of ancient parish churches are now subject to. It is provided, that if the church or chapel be not consecrated, the surrendered sittings belong absolutely to the bishop and his successors, or the commissioners, as the case may be, until the consecration of the church or chapel, from and after which the said sittings are subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches. And the freehold of any church or chapel, consecrated or unconsecrated, may be transferred to the commissioners in like manner as the sittings and be held by them until the consecration, after which they become subject to the same laws of rights and property therein as the pews and sittings of ancient parish churches (c).

678. When there has been a complete surrender of the rights, powers, obligations and trusts affecting the sittings,

(z) New Parishes and Church Building Acts Amendment, 32 & 33 Vict. c. 94, s. 2.

(a) Ibid. s. 3.

(b) Ibid. s. 4.

(c) Ibid. ss. 5 & 6.

or when the transfer of the church or chapel has been effected, all other rights, powers, obligations and trusts derived from the act of parliament or deed under which the church or chapel was built, absolutely cease and determine: saving that rights of patronage are not affected (*d*).

a. GENERAL
ACTS.

679. A person living in a parish or district formed under the Church Building Acts, who has claimed and had assigned to him sittings in the church thereof, thereby surrenders as to any right he may have possessed, an equal number of sittings in the church of the original parish or ecclesiastical district out of which such parish has been taken, unless he hold them by faculty or under act of parliament (*e*). Seats held by prescription are not referred to; and it may, therefore, be doubted whether they would not be absolutely abandoned.

Seats in old church are abandoned on accepting allotment in district church where resident.

Prescriptive rights.

680. An incumbent entitled to pew rents may thereby be entitled to the franchise (*f*). The freehold interest in the church appears to be the real qualification, and the only importance of pew rents is to make the value sufficient; because if the incumbent has a bare freehold in the church, with no power to make any profit out of it, that does not qualify. The fees on marriages, &c. do not afford the money qualification (*g*). The best description in a claim of the kind would seem to be "freehold church with right to pew rents" (*h*).

Pew rents may confer franchise upon incumbent.

(*d*) New Parishes and Ch. Bg. Acts Amend., 32 & 33 Vict. c. 94, s. 7.

(*e*) 19 & 20 Vict. c. 104, s. 5.

(*f*) 15 *Solicitor's Journal*, p. 893 (21 Oct. 1871).

(*g*) *Kirton v. Dear*, 18 *Weekly Rep.* p. 144.

(*h*) 15 *Solicitor's Journal*, p. 893.

PART D.

CHURCHES BUILT UNDER ACTS OF PARLIAMENT.

DIVISION b.

b. PRIVATE ACTS.

PRIVATE ACTS.

Private acts
are exceptions
to general law.

681. As private acts are in their nature exceptions to the general law of the land, and each case to which they refer is necessarily governed by its own special provisions, very few points affecting more than an individual locality can be stated or laid down.

Under a local
act rector not
necessarily
entitled to pew.

682. It was, however, decided that where under a local act of parliament (*a*) the vestrymen were empowered to let all the pews in a church, "except the pews or seats to be appropriated for the gratuitous accommodation of the poor," the court had no power to engraft another exception, and the vestrymen, consequently, had power to remove the rector from one of two pews of which he had been in possession from the time of his induction, and to let them to another inhabitant householder (*b*).

Though by
unwise act of
vestry.

683. Under such circumstances it is not wise, just, expedient, or proper, on the part of the vestry, for the sake of a paltry saving of a few pounds, to deprive the rector of his pew, or to exact rent for it. And, although the Ecclesiastical Court decided against the rector, because it was bound by the act of parliament, it refused to condemn him in costs (*c*). Such an act of parliament directly overturns

(*a*) 51 Geo. III. c. 151, ss. 51, 52.

(*b*) *Spry v. Flood*, 2 *Curt.* p. 355.

(*c*) *Ibid.* p. 397.

all the common law upon the subject, for it at once subverts the authority of the churchwardens, the ancient officers of the church, and confers it upon the vestrymen, who by the old law had no authority at all (*d*).

b. PRIVATE
ACTS.

688. Where the act empowered trustees for pulling down and rebuilding the church of a chapelry, to sell and dispose of the fee simple and inheritance of the pews or seats to any of the inhabitants or residents within the chapelry, with power of sale to any other inhabitants, but with provision that on the death of the purchaser and in default of so descending to revert to the trustees; and the form of conveyance annexed to the statute granted the pew to the purchaser, his heirs and assigns for ever: the Court of Common Pleas held, that it was not the intention of the act to take the freehold from the rector and vest it in the trustees; the purchaser only acquired a right of user; and, therefore, did not acquire a vote for the county by reason that the pew was worth 40s. per annum (*e*).

Pews sold under an act, but limited to descend to inhabitants, give no vote for county.

689. In another case of a church built under private acts, whereby trustees were empowered "to let or sell, and transfer and convey, for the purpose only of attending divine service," and where it was declared that the fee simple and inheritance should be vested in the subscribers, or the proprietors for the time being of the pews, their heirs and assigns for ever: the Court of Common Pleas held that by common law the freehold was generally in the parson, and the right of the inhabitants was limited to use during the services of the church, and at times when open for use, and subject to the regulations of the church; and the act did not vest the freehold in the purchaser. The right was not an interest in the land, but more in the

Pews sold under an act vesting the fee simple in the proprietor does not give a vote for county.

(*d*) *Spry v. Flood*, 2 *Curt.* p. 365.

(*e*) *Hinde v. Chorlton*, 15 *Law Times*, p. 472 (1867).

**b. PRIVATE
ACTS.**

Same rule applies to public act for local purpose.

nature of an easement, although this act attached rights of perpetuity of succession. Consequently, though of 5*l.* annual value, such pew was not a freehold estate entitling the owner to a vote for the county (*f*).

690. And this was immediately followed by a case of a church rebuilt under a public act for building East Stonehouse Chapel, whereby the pews were to be appropriated by the trustees to the subscribers, and then to become vested in such proprietors, their heirs and assigns for ever. The same court decided, in accordance with the last-mentioned case, that there was not a freehold interest entitling the proprietor of a pew to a vote for the county (*g*).

Facilities for surrender.

691. Whenever by any public or private act of parliament, or by any deed, the sittings, or any of them, in any church or chapel, whether consecrated or unconsecrated, are subject to any trust as to their grant, demise, sale or disposal, or are private property for any estate whatsoever, the trustees of such church or chapel, or other person exercising powers of grant, &c., or possessing any rights of ownership by reason thereof, or any person to whom such sittings belong, either with or without consideration, may surrender to the bishop, or the Ecclesiastical Commissioners, all rights of ownership, grant, demise, sale, disposal or other right whatsoever they may have in such sittings (*h*).

692. The other provisions of the act touching this point are already given in DIVISION **a** relating to the general Church Building Acts, to which they equally apply.

(*f*) *Brumfitt v. Roberts & ors.*, *L. R.*, 5 *Com. Pl.* p. 233 (1870).

(*g*) *Greenway v. Hockin*, *L. R.*, 5 *Com. Pl.* p. 235 (1870).

(*h*) *New Parishes Acts Amendment*, 32 & 33 *Vict. c. 94*, s. 2.

LIST OF CASES.

ABBREVIATIONS.

Adm. & Eccles. indicates Admiralty & Ecclesiastical.	Eq. indicates Equity.
C. B. indicates Common Bench.	Exch. " Exchequer.
C. P. " Common Pleas.	K. B. " King's Bench.
Chanc. " Chancery.	N. P. " Nisi Prius.
Cons. " Consistory.	P. C. " Privy Council.
Eccles. " Ecclesiastical.	Q. B. " Queen's Bench.
	V. C. " Vice Chancellor.

			Paragraph in this work.
Anon. . . . .	.. 12 Modern, K. B. Rep.	..	.. 140
Archer v. Sweetman ..	.. Fortescue, K. B. Rep.	..	.. 345
Archer, Swetnam v. ..	.. 8 Modern, K. B. Rep.	..	417, 421
Astley v. Biddle ..	.. 1 Haggard, Cons. Rep.	..	235, 243
Ayliffe, Eaton v. ..	.. Hetley, C. P. Rep.; Hobart, K. B. Rep.	..	.. 140
Baker v. Child ..	.. 2 Vernon, Chanc. Rep.	..	.. 423
Baker v. Richardson ..	.. 4 Barnewall & Alderson, K. B. Rep.	..	385
Baldwyn, Colebach v. ..	.. 2 Lutwyche, C. P. Rep.	..	.. 178
Barnes, Partington v. Rector of ..	.. 2 Lee, Eccles. Rep.	..	.. 30
Barrow v. Keen ..	.. Siderfin, K. B. Rep.	..	.. 100
Barrow v. Kew ..	.. 2 Keble, K. B. Rep.	..	.. 100
Bastin, Rippin & W. v. ..	.. Law Journal Rep. N. S. Eccles.	..	.. 153
Bateman, Bunton v. ..	.. 1 Levinz, K. B. Rep.	..	.. 407
Bateman, Buxton v. ..	.. Siderfin, K. B. Rep.	..	.. 388
Battiscombe v. Eve ..	.. Jurist, 9 N. S.; Law Journal, N. S.	..	146
Beardsly, Greaterchy v. ..	.. 2 Levinz, K. B. Rep.	..	90, 180
Beddingfield, Day v. ..	.. Noy, K. B. Rep.	..	.. 129
Biddle, Astley v. ..	.. 1 Haggard, Cons. Rep.	..	235, 243
Bingham, Duke of Portland v. ..	.. 1 Haggard, Cons. Rep.	..	.. 281
Blake v. Osborne ..	.. 8 Haggard, Eccles. Rep.	..	72, 226, 255, 266, 354, 392
Booth, Stocks v. ..	.. 1 Term Reports, K. B.	..	188, 225, 301, 307, 351
Brabin v. Tradum ..	.. Popham, K. B. Rep.	..	.. 179, 307
Brabin v. Trediman ..	.. 2 Rolle, K. B. Rep.	..	.. 177
Brewster, Spooner v. ..	.. 3 Bingham, C. P. Rep.	..	.. 101, 104

			Paragraph in this work.
Bridger, Pettman <i>v.</i>	..	.. 1 Phillimore, Eccles. Rep.	84, 187, 214, 220, 230, 310, 364, 389, 392, 401
Brooks, Rogers <i>v.</i>	..	.. 1 Term Reports, K. B.	.. 188, 398
Bunton <i>v.</i> Bateman	..	.. 1 Levinz, K. B. Rep.	.. 407
Burder, Veley <i>v.</i>	..	.. 12 Adolphus & Ellis, K. B. Rep.	.. 154
Burnet, Hole <i>v.</i>	..	.. 1 Haggard, Cons. Rep.	.. 242
Burton <i>v.</i> Henson	..	.. 10 Meeson & Welsby, C. P. Rep.	.. 269
Bushnell, Rich <i>v.</i>	..	.. 4 Haggard, Eccles. Rep.	.. 130
Butt <i>v.</i> Jones	..	.. 2 Haggard, Eccles. Rep.	299, 321, 323, 355, 359
Buxton <i>v.</i> Bateman	..	.. Siderfin, K. B. Rep.	.. 388
Buzzard's case	..	.. 2 Rolle's Abridgement	.. 408
Byerley <i>v.</i> Windus	..	.. 5 Barnewall & Cresswell, K. B. Rep.	210, 222, 256, 260, 302, 308, 310, 311, 312, 313, 370, 419, 420, 426
Cambridge (Univ. of), Hallack <i>v.</i>	1 Q. B. Rep.	..	.. 312, 356
Cardinall <i>v.</i> Molynaux	..	.. Law Times, 4 N. S.	.. 71, 143
Chapman <i>v.</i> Jones	..	.. Law Reports, 4 Exch.	121, 287, 300, 377, 411
Cheslom, Witcher <i>v.</i>	..	.. 1 Wilson, K. B. Rep.	.. 422
Child, Baker <i>v.</i>	..	.. 2 Vernon, Chanc. Rep.	.. 423
Churton <i>v.</i> Frewen	..	.. Law Reports, 2 Eq.	.. 410, 424
Chute, Langley <i>v.</i>	..	.. Sir Thos. Raymond, K. B. Rep.	.. 181
Clifford <i>v.</i> Weeks	..	.. 1 Barnewall & Alderson, K. B. Rep.	159, 160, 270
Colebach & others <i>v.</i> Baldwin	..	.. 2 Lutwyche, C. P. Rep.	.. 178
Collins, Mant <i>v.</i>	..	.. 10 Jurist; 15 Law Journal, Q. B.	.. 120
Cordingley, Ritchings <i>v.</i>	..	.. Law Reports, 3 Adm. & Eccles.	.. 173
Corven, (Pym) <i>v.</i>	..	.. 12 Coke, K. B. Rep.	.. 139, 183
Cosens, Darby <i>v.</i>	..	.. 1 Term Rep., K. B. Rep.	.. 426
Craig <i>v.</i> Watson	..	.. Sir R. J. Phillimore (unrep.)	238, 241, 300, 309
Curtis, Morgan <i>v.</i>	..	.. 8 Manning & Ryland, K. B. Rep.	159, 169, 195, 248
Dallow, Jacob <i>v.</i>	..	.. 2 Salkeld, K. B. Rep.; 2 Lord Ray- mond, K. B. Rep.	.. 420
Daniel, Lee <i>v.</i>	..	.. 12 Modern, K. B. Rep.	.. 145
Darby <i>v.</i> Cosens	..	.. 1 Term Reports, K. B.	.. 426
Dawtree <i>v.</i> Dee	..	.. 2 Jac., C. B. Rep.	.. 66, 101
Day <i>v.</i> Beddingfield & others	..	.. Noy, K. B. Rep.	.. 129
Dearle <i>v.</i> Southwell	..	.. 2 Lee, Eccles. Rep.	.. 346
Dee, Dawtree <i>v.</i>	..	.. 2 Jac. C. B. Rep.	.. 66, 101
Derry Cathedral	..	.. Law Times Reports, 8 N. S.	2, 4, 5, 132, 396
Dewdney <i>v.</i> Good	..	.. Jurist, 7 N. S.; Law Reports, 3 Adm. & Eccles.	.. 103
Drewe, Harris <i>v.</i>	..	.. 2 Barnewall & Adolphus, K. B. Rep.	304, 306, 381

			Paragraph in this work.
Drury v. Harrison	..	.. 3 Phillimore, Eccles. Rep.	169, 207, 247
Eaton v. Ayliffe	..	.. Hetley, C. P. Rep.; Hobart, K. B. Rep.	.. .. 140
Ellis, Hall v.	..	.. Noy, K. B. Rep.	155, 270, 272, 278, 404, 405
Ellis, Jones v.	..	.. 2 Younge & Jervis, Exch. Rep.	108, 109, 112, 113
Ely (Bishop of) v. Gibbons	..	.. 4 Haggard, Eccles. Rep.	.. .. 92
Evans v. Slack & others	..	.. Law Journal Rep., 38 N. S., Eccles.	31, 32, 33, 38, 41, 42, 43, 44, 45, 52, 53, 54, 55.
Eve, Battiscombe v.	..	.. Jurist, 9 N. S.; Law Journal, N. S.	146
Fitzwalter v. ———	..	.. Year Book 8 Henry VII.	12 .. 14
Flood, Spry v.	..	.. 2 Curteis, Eccles. Rep.	233, 250, 275, 281, 397
Frances v. Ley	..	.. Croke, K. B. Rep.	.. .. 112
Francis v. Law	..	.. 2 Croke, K. B. Rep.	.. .. 129
French v. Trask	..	.. 10 East, K. B. Rep.	.. .. 426
Frewen, Churton v.	..	.. Law Reports, 2 Eq.	.. .. 410, 424
Fuller v. Lane	..	.. 2 Addams, Eccles. Rep.	132, 134, 150, 165, 168, 187, 192, 197, 201, 239, 251, 252, 256, 260, 286, 311, 312, 317, 318, 319, 320, 322, 324, 325, 328, 334, 335, 340, 342, 349, 350, 352, 358, 363, 364, 392, 394, 400
Garven, Pym v.	..	.. Godbolt, K. B. Rep.	.. .. 183, 407
Gibbons, Bishop of Ely v.	..	.. 4 Haggard, Eccles. Rep.	.. .. 92
Gilbert, May v.	..	.. 2 Bulstrode, K. B. Rep.	403, 404, 405
Giles, Mainwaring v.	..	.. 5 Barnewall & Alderson, K. B. Rep.	148, 149, 279, 378, 380, 416
Gilson v. Wright	..	.. Noy, K. B. Rep.	.. .. 98, 102
Good, Dewdney v.	..	.. Jurist, 7 N. S.; Law Reports, 3 Adm. & Eccles.	.. .. 103
Gorwyn, Pym v.	..	.. Moor, K. B. Rep.	105, 183, 186, 402, 407
Gosling v. Veley	..	.. 12 Q. B. Rep.	.. .. 84
Gray v. ———	..	.. Cited in Moor, K. B. Rep.	.. .. 105
Greaterchry v. Beardsly	..	.. 2 Levinz, K. B. Rep.	.. .. 90, 180
Groves v. Rector of Hornsey	..	.. 1 Haggard, Cons. Rep.	31, 33, 34, 41, 42, 43, 44, 45, 59, 60, 62, 63, 64, 69, 74, 75, 76, 189, 199, 254, 337, 338, 372, 400
Gunner & Drury, Walter v.	..	.. 1 Haggard, Cons. Rep.	.. .. 172, 202, 203, 204, 205, 206, 212, 236, 237, 238, 258, 264, 303, 307, 308, 314, 315, 316
Hall v. Ellis	..	.. Noy, K. B. Rep.	155, 270, 272, 278, 404, 405
Hallack v. Univ. of Cambridge.	1 Q. B. Rep.	.. ..	.. .. 312, 356
Hansard, Sharpe v.	..	.. 3 Haggard, Eccles. Rep.	.. .. 329
Harford v. Jones	..	.. 1 Haggard, Cons. Rep.	.. .. 240, 341

			Paragraph in this work.
Harman v. Renew	..	.. 8 Salkeld, K. B. Rep.	.. 86
Harris v. Drewe	..	.. 2 Barnewall & Adolphus, K. B. Rep.	304, 306, 381
Harris v. Wiseman	..	.. Winch, C. P. Rep.	.. 307
Harrison, Drury v.	..	.. 1 Phillimore, Eccles. Rep.	169, 207, 247
Harrison v. Swayne & S.	..	.. Sir R. J. Phillimore (unpublished)	36, 37, 339, 344
Haynes' case	..	.. 12 Coke, K. B. Rep.	.. 294
Henson, Burton v.	..	.. 10 Meeson & Welsby, C. P. Rep.	.. 269
Hole v. Burnet	..	.. 1 Haggard, Cons. Rep.	.. 242
Hornsey, Groves v. Rector of	..	.. 1 Haggard, Cons. Rep.	31, 33, 34, 41, 42, 43, 44, 45, 59, 60, 62, 63, 64, 69, 74, 75, 76, 189, 199, 254, 337, 338, 372, 400
Hutton's case	..	.. Latch, K. B. Rep.	.. 416
Jacob v. Dallow	..	.. 2 Salkeld, K. B. Rep.; 2 Lord Ray- mond, K. B. Rep.	.. 420
Jarratt v. Steele	..	.. 3 Phillimore, Eccles. Rep.	.. 95
Jones, Butt v.	..	.. 2 Haggard, Eccles. Rep.	229, 321, 323, 355, 359
Jones, Chapman v.	..	.. Law Reports, 4 Exch.	121, 287, 300, 377, 411
Jones v. Ellis	..	.. 2 Younge & Jervis, Exch. Rep.	108, 109, 112, 113
Jones, Harford v.	..	.. 1 Haggard, Cons. Rep.	.. 240, 341
Keen, Barrow v.	..	.. Siderfin, K. B. Rep.	.. 100
Kensington (Churchwardens of) v. Trier	..	.. 1 Haggard, Cons.	.. 239
Kew, Barrow v.	..	.. 2 Keble, K. B. Rep.	.. 100
Kingsford, Sieveking and E. v.	..	.. 15 Law Times Rep.; Law Journal Rep., 36 N. S.	.. 27, 97, 110, 111
Knapp & others v. Nicholl	..	.. 2 Robertson, Eccles. Rep.	29, 56, 78, 345, 358, 391, 395, 399, 425
Knight, Tattersall v.	..	.. 1 Phillimore, Eccles. Rep.	46, 47, 48, 49, 50, 51, 58, 73, 77, 185, 186, 304, 305, 336, 353
Lane, Fuller v.	..	.. 2 Addams, Eccles. Rep.	132, 134, 150, 165, 168, 187, 192, 197, 201, 239, 251, 252, 256, 260, 280, 311, 312, 317, 318, 319, 320, 322, 324, 325, 328, 334, 335, 340, 342, 349, 350, 352, 358, 363, 364, 392, 394, 400
Langley v. Chute	..	.. Sir Thos. Raymond, K. B. Rep.	.. 181
Law, Francis v...	..	.. 2 Croke, K. B. Rep.	.. 129
Leach, Parker v.	..	.. 4 Moore, P. C. Rep.	.. 147
Lee v. Daniel	..	.. 12 Modern, K. B. Rep.	.. 145
Lee v. Matthews	..	.. 3 Haggard, Eccles. Rep.	.. 112
Ley, Frances v.	..	.. Croke, K. B. Rep.	.. 112
Londonderry Cathedral	..	.. Law Times Rep., 8 N. S.	2, 4, 5, 132, 396
Mainwaring v. Giles	..	.. 5 Barnewall & Alderson, K. B. Rep.	148, 149, 279, 378, 380, 416

			Paragraph in this work.
Mant v. Collins .. ..	.. 10 Jurist; 15 Law Journal, Q. B. ..	120	
Matthews, Lee v. .. ..	.. 3 Haggard, Eccles. Rep.	112	
May v. Gilbert .. ..	.. 2 Bulstrode, K. B. Rep.	403, 404, 405	
Molyneux, Cardinall v. ..	.. Law Times, 4 N. S.	71, 143	
Monkton, Reynolds v. ..	.. 2 Moody & Robinson, N. P. Rep. ..	267, 268	
Morgan v. Curtis .. ..	.. 3 Manning & Ryland, K. B. Rep. ..	159, 169, 195, 248	
Morris, Thomas & H. v. ..	.. 1 Addams, Eccles. Rep.	40	
Moss, Wilkinson v. .. ..	.. 2 Lee, Eccles. Rep.	28, 227, 229	
Mott & French, Wyllie v. ..	.. 1 Haggard, Eccles. Rep.	167, 198, 207, 213, 218, 219, 224, 228, 234, 237, 238, 244, 245, 249, 253, 257, 259, 300	
Nicholl, Knapp & others v. ..	.. 2 Robertson, Eccles. Rep.	29, 56, 78, 345, 358, 391, 395, 399, 425	
Ouldrige, Woollocombe v. ..	.. 3 Addams, Eccles. Rep.	231, 256, 262, 326, 327	
Parham v. Templar .. ..	.. 3 Phillimore, Eccles. Rep.	21, 22, 23, 57, 70, 73, 114, 208, 215, 246, 256, 260	
Parker v. Leach .. ..	.. 4 Moore, P. C. Rep.	147	
Partington v. Rector of Barnes. ..	.. 2 Lee, Eccles. Rep.	30, 331, 332, 333	
Pettman v. Bridger .. ..	.. 1 Phillimore, Eccles. Rep.	84, 187, 214, 220, 230, 310, 364, 389, 392, 401	
Portland (Duke of) v. Bingham ..	.. 1 Haggard, Cons. Rep.	281	
Presgrave v. Churchwardens of Shrewsbury. ..	.. 1 Salkeld, K. B. Rep.	184	
(Pym) v. Corven .. ..	.. 12 Coke, K. B. Rep.	139, 407	
Pym v. Garven .. ..	.. Godbolt, K. B. Rep.	183, 407	
Pym v. Gorwynn .. ..	.. Moor, K. B. Rep.	105, 183, 186, 402, 407	
Renew, Harman v. .. ..	.. 3 Salkeld, K. B. Rep.	86	
Reynolds v. Monkton .. ..	.. 2 Moody & Robinson, N. P. Rep. ..	267, 268	
Rich v. Bushnell .. ..	.. 4 Haggard, Eccles. Rep.	130	
Richardson, Baker v. ...	.. 4 Barnewall & Alderson, K. B. Rep. ..	385	
Richardson v. Thomas .. ..	.. 9 Adolphus & Ellis, K. B. Rep. ..	274	
Rippin & W. v. Bastin .. ..	.. Law Journal Rep., 38 N. S., Eccles. ..	153	
Ritchings v. Cordingley .. ..	.. Law Rep., 3 Adm. & Eccles.	173	
Robinson, Woodman v. .. ..	.. Simons, 3 N. S., V. C. Rep.	209	
Rogers v. Brooks .. ..	.. 1 Term Rep. K. B.	188, 398	
Sharpe v. Hansard .. ..	.. 3 Haggard, Eccles. Rep.	329	
Shrewsbury (Chwardens of), Presgrave v. ..	.. 1 Salkeld, K. B. Rep.	184	
Sieveking & E. v. Kingsford ..	.. 15 Law Times Rep.; Law Journal Rep., 36 N. S.	27, 96, 110, 111	
Slack & others, Evans v. ..	.. Law Journal Rep., 38 N. S., Eccles. ..	31, 32, 33, 38, 41, 42, 43, 44, 45, 52, 53, 54, 55	
Southwell, Dearle v. .. ..	.. 2 Lee, Eccles. Rep.	346, 347	
Spooner v. Brewster .. ..	.. 3 Bingham, C. P. Rep.	101, 104	
Spry v. Flood .. ..	.. 2 Curteis, Eccles. Rep.	233, 250, 275, 281, 397	

			Paragraph in this work.
Steele, Jarratt v. ..	..	3 Phillimore, Eccles. Rep. ..	95, 109
Stevens v. Woodhouse ..	..	1 Haggard, Cons. Rep. ..	238, 239, 292
Stocks v. Booth.. ..	..	1 Term Rep. K. B. ..	188, 225, 301, 307, 351
Swayne & S., Harrison v. ..	..	Sir R. J. Phillimore (unpub.)	36, 37, 339, 344
Sweetman, Archer v. ..	..	Fortescue, K. B. Rep. ..	417, 421
Swetnam v. Archer ..	..	8 Modern, K. B. Rep. ..	417, 421
Tattersall v. Knight ..	..	1 Phillimore, Eccles. Rep. ..	46, 47, 48, 49, 50, 51, 58, 73, 77, 185, 186, 304, 305, 336, 353
Templar, Parham v. ..	..	3 Phillimore, Eccles. Rep. ..	21, 22, 23, 57, 70, 73, 114, 208, 215
Tessimond v. Yardley ..	..	5 Barnewall & Adolphus, K. B. Rep. ..	79
Thomas & Hughes v. Morris ..	..	1 Addams, Eccles. Rep. ..	40
Thomas, Richardson v. ..	..	9 Adolphus & Ellis, K. B. Rep. ..	274
Tradum, Brabin v. ..	..	Popham, K. B. Rep. ..	179
Trask, French v. ..	..	10 East, K. B. Rep. ..	426
Trediman, Brabin v. ..	..	2 Rolle, K. B. Rep. ..	177
Trier, Churchwardens of Ken- sington v. ..	..	1 Haggard, Cons. Rep. ..	239
Usborne, Blake v. ..	..	8 Haggard, Eccles. Rep. ..	72, 226, 255, 266, 354, 392
Veley v. Burder.. ..	..	12 Adolphus & Ellis, K. B. Rep. ..	154
Veley, Gosling v. ..	..	12 Q. B. Rep. ..	84
Walter v. Gunner & Drury ..	..	1 Haggard, Cons. Rep. ..	172, 202, 203, 204, 205, 206, 212, 236, 237, 238, 258, 264, 303, 307, 308, 314, 315, 316
Watson, Craig v. ..	..	Sir R. J. Phillimore (unrep.)	238, 241, 300, 309
Weeks, Clifford v. ..	..	1 Barnewall & Alderson, K. B. Rep. ..	159, 160, 270
Wilkinson v. Moss ..	..	2 Lee, Eccles. Rep. ..	28, 227, 229
Windus, Byerley v. ..	..	5 Barnewall & Cresswell, K. B. Rep. ..	210, 222, 256, 260, 302, 308, 310, 311, 312, 313, 370, 419, 420, 426
Wiseman, Harris v. ..	..	Winch, C. P. Rep. ..	307
Witcher v. Cheslom ..	..	1 Wilson, K. B. Rep. ..	422
Woodhouse, Stevens v. ..	..	1 Haggard, Cons. Rep. ..	238, 239, 292
Woodman v. Robinson..	..	Simons, 3 N. S., V. C. Rep. ..	209
Woollocombe v. Ouldridge	..	3 Addams, Eccles. Rep. ..	231, 256, 262, 326, 327
Wright, Gilson v. ..	..	Noy, K. B. Rep. ..	98, 102
Wycher's (Lady) case ..	..	Year Book, 9 Edward IV. ..	128
Wyllie v. Mott & French	..	1 Haggard, Eccles. Rep. ..	167, 198, 207, 213, 218, 219, 224, 228, 234, 237, 238, 244, 245, 249, 253, 257, 259, 300
Yardley, Tessimond v. ..	..	5 Barnewall & Adolphus, K. B. Rep. ..	79

GENERAL INDEX TO BOOK II.

	Paragraph		Paragraph
ABANDONMENT,		AISLE,	
of possessory rights..	256, 261—265	effect of repair by parish ..	481
rights under faculty ..	288	reversion to parish ..	288
rights by prescription ..	506—508	<i>See</i> PRESCRIPTION.	
ABOLITION,		ALLOTMENT,	
of Church Rates, effect on liability		of cathedral seats ..	2, 4
for repairs.. ..	88	in parish church by wardens ..	141
ABSENCE,		how guided.. ..	196, 262
lease of pew terminated by, ..	671	whether independent of bishop 175—185	
ACCOMMODATION,		whether reasonable and legal 141, 194	
considered on grant of faculty ..	36	if for money ..	238, 240
ACT OF PARLIAMENT,		origin in 17th century ..	165
alone can alter Law of Prohibition 579		inconvenience ..	167, 170, 171
private and local Acts ..	681—692	when chairs instead of benches ..	173
<i>See</i> "LIST OF AUTHORITIES."		seats in chancel ..	151
<i>See</i> CHURCH-BUILDING ACTS.		alteration from time to time ..	251
ACT ON PETITION,		abandoned for seat in new parish..	265
mode of proceeding in Ecclesiastical		prevention by faculty ..	371
Courts	29	under Church-building Acts 624, 626,	627
ACTION,		<i>See</i> RANK AND STATION.	
at Common Law for prescription ..	148	ALTAR OF CHAPEL,	
for disturbance in chancel seat ..	279	of contiguous parishes determines	
whether for right to sit ..	149	jurisdiction	601
ACTION OF DEBT,		ALTERATIONS,	
to recover arrears of rents ..	632	in church, objection to, ..	209
ACTION ON THE CASE,		of seats, with consent of Bishop ..	97
for prescriptive rights 380, 451, 465		inspection by Archdeacon ..	111
by persons jointly ..	505	of seats in united parish, cost of, ..	89
for destroying chancel seats ..	520	ANNEXATION,	
to recover arrears of rents ..	632	<i>See</i> PRESCRIPTION.	
form of Declaration ..	490	APPEAL,	
<i>See</i> PRESCRIPTION.		from Ordinary ..	355, 356
ADDITIONAL ACCOMMODATION,		from Commissioners ..	606, 607
need determined by Ordinary ..	61	prohibition after appeal ..	567
probable need, a consideration in re-		APPLICATION,	
spect to faculties ..	323—326	<i>See</i> FACULTY.	
fund for, out of surplus rents ..	644	<i>See</i> RENTS.	
ADDITIONAL SERVICE,		APPORTIONMENT,	
appointed by Bishop ..	617	of pew held by prescription ..	447
one-fourth of seats free ..	617	APPROPRIATION,	
		<i>See</i> ALLOTMENT.	
		<i>See</i> FACULTY.	

	Paragraph		Paragraph
ARCHDEACON,		CATHEDRAL,— <i>continued.</i>	
Member of Commission ..	604	seats, when also parochial ..	5
inspecting seats in dispute ..	111	transfer to new parish church ..	6
ARMOUR AND ARMS,		CENSURE, ECCLESIASTICAL,	
belong to heir ..	513, 516	for not providing full accommoda-	
trespass for pulling down ..	105	tion ..	199, 200
ARRANGEMENT,		CHAIRS,	
of parishioners by Bishop ..	137	effect on system of allotment ..	173
<i>See</i> ALLOTMENT.		CHALICE,	
<i>See</i> SEATS.		faculty for exchange ..	24
ASSENT,		CHANCEL,	
of Bishop to trifling alterations ..	22, 24, 25	strictly, not included in <i>church</i> ..	153
ATTACHMENT,		often used for <i>chantry</i> ..	152
for disobedience of prohibition ..	574, 575	repair by rector ..	81
for fresh act in similar matter ..	578	CHANCEL SEATS,	
AUCTION,		generally ..	151
sale of pews by ..	633, 634	Rector's chief seat ..	270—273, 436
BEADLE,		Vicar or Perpetual Curate ..	274—277
salary paid out of rents ..	646	Rector's family ..	161, 164, 233
BELLS,		lay impropiator ..	278
remedy for removal of, ..	540	allotment ..	154—160, 163
BEQUEST,		repair ..	91, 92, 272
of moveable seats ..	17, 125	removal ..	109
of choir seats ..	18	presumption as to faculty ..	439, 462
BILL,		CHANCERY, COURT OF,	
of quiet possession ..	423, 424	as respects church alterations ..	71, 143
BISHOP,		prohib. of Ecclesiastical Court ..	525, 549
has cure throughout diocese ..	1, 138	jurisdiction by consent ..	423, 424
regulates seats in cathedral ..	2	CHANTRY CHAPEL,	
examines rights on transfer ..	6	often called a <i>chancel</i> ..	152
consent to erection of church ..	9	not necessarily parted off ..	435
control over incumbent ..	9	beyond jurisdiction of Ordinary ..	429, 431
control over parish church seats ..	19, 140	freehold of inheritance ..	429
assent to alterations ..	23, 24	whether annexed to house, manor or land ..	430, 433, 434
<i>See</i> ORDINARY.		conveyance by owner ..	433
BREAKING,		<i>See</i> PRESCRIPTION.	
seat, an ecclesiastical offence ..	103	CHAPEL,	
action for trespass for, ..	98—103, 191	removal of seats in ..	108
church chest, or wall ..	539, 542	<i>See</i> CHANTRY.	
BUILDING,		CHAPEL OF EASE,	
<i>See</i> ERECTION.		resembling earliest churches ..	7
<i>See</i> FABRIC.		allotment of seats in ..	145
CASE,		becoming a district church ..	672
<i>See</i> ACTION ON THE CASE.		CHAPEL, PRIVATE,	
CATHEDRAL,		in nature of proprietary chapel ..	582
foundation of cathedrals ..	8	bishop's power over seats ..	580
parish church of diocese ..	1	affected by recent Ch.-building Act ..	522
may also be parochial ..	2	Act of Parliament in 1871 ..	580
liability for repairs ..	1	CHAPEL, PROPRIETARY,	
whether seats permissible ..	2, 3	anomalous nature ..	583
as to allotment of seats ..	2—4	no parochial rights ..	583—585
		resemblance to private chapel ..	582
		erection and appointment of seats ..	586

- | | Paragraph | | Paragraph |
|---------------------------------------|-------------------------|---|------------------|
| CHAPELRY, | | CHURCHWARDENS—continued. | |
| liability for repairs of church .. | 83 | under Church-Building Acts— <i>contd.</i> | |
| CHOIR, | | as to seats | 598 |
| <i>See</i> CHANCEL. | | letting of seats | 629, 630 |
| CHURCH, | | alteration of rental | 628 |
| cathedral, church of diocese .. | 1 | collection of rents | 620, 681, 668 |
| of old parish, | | recovery of arrears by action .. | 630 |
| earliest, like Chapels of Ease .. | 7 | by reletting or selling .. | 633, 634, 668 |
| foundation of churches .. | 8—10 | CHURCHYARD WALL, | |
| term excluding <i>chancel</i> .. | 153 | action for breaking | 542 |
| enlarged if insufficient .. | 199 | CITATION, | |
| preservation of symmetry .. | 69, 70, 338 | of parishioners on application for a | |
| door, lock and key .. | 121 | faculty | 28 |
| seats not permanently appropriated .. | 442 | of churchwardens to provide a seat .. | 203 |
| under Church-Building Acts, | | to restore seats removed .. | 110 |
| loan for building secured by rents .. | 636 | return to citation | 204—206 |
| allotment and rent of seats .. | 135, 590, 591 | CLEANING, | |
| rights in seats transferred to .. | 599 | is not repair | 483 |
| <i>See</i> REPAIRS. | | CLERGY, | |
| <i>See</i> SUBSCRIBERS. | | originally had no fixed cures .. | 7 |
| <i>See</i> SUBSTITUTED CHURCH. | | <i>See</i> CLERGYMAN. | |
| CHURCH-BUILDING ACTS, | | <i>See</i> CURATE. | |
| origin in 1818 | 587 | <i>See</i> INCUMBENT. | |
| grant by Parliament | 588 | <i>See</i> RECTOR. | |
| list of Acts | 595 | <i>See</i> VICAR. | |
| general nature | 589, 590 | CLERGYMAN, | |
| reserving rights of dignitaries .. | 589, 596 | nomination by subscribers to church- | |
| CHURCH-BUILDING COMMIS- | | building | 663 |
| SIONERS, | | stipend paid out of rents .. | 637—639, 640—642 |
| origin and ultimate amalgamation .. | 587 | whether rents confer franchise on .. | 680 |
| power on nomination of clergyman .. | 665 | CLERK, | |
| as regards repairs | 652 | <i>See</i> PARISH CLERK. | |
| rents of seats | 641, 642, 647, 648 | COAT-ARMOUR, | |
| reduction or termin. of rents .. | 659—662 | <i>See</i> ARMOURER AND ARMS. | |
| CHURCH-RATE, | | COMMISSION, | |
| compulsory rate abolished .. | 200, 654 | on transfer from cathedral to new | |
| exception as to previous charges .. | 657 | church | 6, 369 |
| aided by surplus rents .. | 643, 644 | on substitution of new church .. | 366 |
| CHURCHWARDENS, | | on enlargement of parish ch. .. | 602, 603 |
| of old parish churches, | | proceedings under | 604, 605 |
| duty to preserve order .. | 170, 267—269 | appeal from | 606, 607 |
| prevent improper occupation .. | 172, 268, 269 | recommended for investigating | |
| authority as to seats .. | 169, 174, 196 | claims | 366 |
| whether independent of ordinary .. | 175, 182, 185, 187, 189 | <i>See</i> ECCLESIASTICAL COURTS COM- | |
| exercise of discretion .. | 202, 207, 208, 214 | MISSION. | |
| effect of their allotment .. | 213, 246—251 | COMMISSIONERS, | |
| hinderance by faculty seats .. | 363 | <i>See</i> CHURCH-BUILDING COMMIS- | |
| repairs and removal of seats .. | 80, 98 | SIONERS. | |
| claim to abandoned seat .. | 518 | COMMITTEE, | |
| trespass by breaking into chapel .. | 112 | for building, &c., proceedings of .. | 45 |
| under Church-Building Acts, | | COMMON LAW, | |
| one elected by renters .. | 668 | non-interference with ch. seats .. | 403—405 |

	Paragraph		Paragraph
CONFIRMATION, of works done	39	DECENCY OF SERVICE, considered on applic. for faculty	36, 65
See FACULTY.		DECLARATION, form of, in action on case	490
CONSECRATION, on re-erection of church	147	DECREE WITH INTIMATION, on application for faculty	28, 30
CONSTRUCTION OF SEATS, See ERECTION. See MATERIALS.		annexation of plan to	58
CONSULTATION, no prohibition after,	573	DEFECT OF TRIAL, ground for prohibition	527, 544—547
CONTEMPT, by disobedience of prohibition	574—578	DELEGATES, HIGH COURT OF, prohibited in respect to prescriptive rights	177, 567
CONTROVERSY, respecting seats, jurisdiction in,	19, 139, 140	DISCRETION, of Ecclesiastical Court is free	33, 34
CONVENIENCE, considered on application for faculty	36, 48, 53	if unsound, appealable	355, 356, 535
CORPORATION, prescribing for seats	492	DISPOSAL OF SEATS, See ALLOTMENT.	
charge for expenses of seats	493	DISTRICT PARISH, liable for repairs of mother ch.	651, 652
COST, of church and site, See LOAN. See SUBSCRIBERS.		DISTURBANCE, to be prevented by wardens	170
of seats to be considered	36—38, 55, 56	in body of church, under what juris- diction	148, 149
COSTS, controlled by ecclesiastical courts	74—76	in chancel, whether actionable	278
in ecclesiastical court, whether grant- able by King's Bench	79, 572	DISTURBER, presumption against	460
of appeal	77, 78	See PERTURBATION SUIT.	
CRIMINAL ACT, of incumbent in removing seat	110	DOOR, of church is part of building	121
CURATE, without authority to alter seats	114	of pew is a chattel	120
CURATE, PERPETUAL, right to chief seat	274—277	EASEMENT, prescript. for seats, in nature of,	378, 379
seats for his family	281	ECCLESIASTICAL COURT, authority where no prescription	19, 140, 142, 523
may maintain trespass	113	respecting bells, timber & wall	539—542
CURE OF SOULS, by bishop in his diocese	1	in unconsecrated building	146
CUSHIONS, whether a repair	85	in respect to disturbance	149
CUSTOM, giving right to attend church	12	in cause of perturbation	219
duty of repair by	12, 92, 141, 158, 178	inhibition of disturbers	504
allotment of seats independent of bishop	177—185	See PERTURBATION.	
of charging rent, illegal	242, 243	over warden's allotment	202
DANGER TO FABRIC, objection to grant of faculty	62, 63	country courts, proceedings often irregular	73
		court gives early opinion on law	72
		rules of guidance	150
		control over costs	74
		whether costs grantable with probi- tion	572
		See COSTS.	
		authority in questions of prescription	425
		on what grounds prohibited	527, 528, 570

ECCLESIASTICAL COURT — <i>contd.</i>	Paragraph
prohibited after sentence	566, 567, 570, 571
credited with legal intentions	.. 556
not prohibited till after pleas by both parties	.. 551—554
protected by prohibition from other courts	.. 524
<i>See</i> PROHIBITION.	
ECCLESIASTICAL COURTS COMMISSION,	
reports and recommendations	162, 366 367, 521
ECCLESIASTICAL LAW,	
effect of Church-building Acts on	.. 596
ENDOWMENT,	
of parish church necessary	.. 10
under Church-building Acts	660, 662
ENLARGEMENT OF PEW,	
its effect on prescriptive claim	.. 501
ERECTION,	
of church with consent of bishop	.. 9
consent of parishioners	.. 21
endowment necessary	.. 10
by what authority	.. 20, 21
loan for, charged on rents	.. 636, 643
ESTATE,	
whether pew appurtenant to,	443, 444
EVIDENCE,	
<i>See</i> PRESCRIPTION.	
EXCESS OF JURISDICTION,	
ground for prohibition	.. 543
EXCHANGE OF SEATS,	
faculty for	.. 351
EXCHEQUER COURT,	
prohibiting Ecclesiastical Court	.. 525
EXTRA-PAROCIAL PERSONS,	
right to seats only by prescription	210, 222, 563
EXTRA (or Third) SERVICE,	
subscriptions for, and seats at,	.. 635
FABRIC, Injury to,	
objection to grant of faculty	.. 62, 63
FACULTY: various kinds.	
what it is	.. 282—286
formerly too freely granted	.. 317
as foundation for prescription	361, 438
mischievous effect	.. 328, 360—364
for enlargement of church	.. 345
for alterations in ch.	20—24, 557—560
to confirm works done	.. 39
for erection of gallery	.. 46, 47

FACULTY: various kinds—continued.	Paragraph
for aisle (to founder)	.. 286—288
for re-arrangement of seats	.. 357
for seat to individual, legality of,	289—299
for seats, <i>at large</i>	.. 349
to man, and family or heirs	308, 350, 352, 353
as annexed to house or land	299—305, 309, 310, 312
with permission to let	.. 314—316
to non-parishioner	.. 311, 313
to a corporation	.. 559
for exchange of seats	.. 351
for seats in chancel	.. 462
for preventing future appropriation	371
revocable if unduly granted or obtained by surprise	.. 299, 359
80 years insufficient to presume a grant	.. 466
FACULTY, Application for,	
citation of parishioners	.. 28
plan produced	.. 57, 58
form of suit	.. 29
considerations for court	35—38, 41, 62, 65, 331—345
as to cost	.. 55, 56
free discretion of court	.. 30, 34
requirements for faculty	.. 55, 59
convenience or prejudice of parish	65, 329—332
obstruction or inconvenience	336—338
injury to fabric or light	62—64, 337, 338
for general seating opposed by individual	.. 38, 339, 348
to individual opposed by incumbent and wardens	.. 331
opposed by person having possessory right	.. 346
considerations by court	333, 335, 340, 342, 343
only granted under special circumstances	.. 327, 342, 343
not granted to person opposing application	.. 347
rents conclusive against claim	.. 496
FACULTY, Rights under,	
whether in nature of joint tenancy	.. 306
transfer from cathedral to new ch.	.. 6
on chapel becoming district	599, 600
to substituted church	.. 368
examination before transfer	6, 600
recommendation of commission	365—673
whether abandoned on leaving parish	.. 370

	Paragraph		Paragraph
FACULTY, Rights under—<i>continued</i>.		HEIR,	
discharged in ch. of united parishes	357	monuments, arms, and pews by pre-	
on expiration revert to parish	354	scription belong to	513—516
FAMILY,		HEIRLOOM,	
of rector, in chancel	280	nature and derivation of term	511, 512
perpetual curate	281	materials of pews in nature of,	513
families sitting together	252, 253	HIGH COMMISSION COURT,	
different families in one pew	254, 255	prohibited in question of prescrip-	
FINE,		tion	524
for disobedience of prohibition	574, 577	HOUSE,	
FOREIGNER,		80 years old, insufficient for pre-	
<i>See NON-PARISHIONER.</i>		scription	466
FOUNDER,		of residence, fund for building	644, 647
right to chantries and aisles	407	HOUSEHOLDER,	
prescription as to repairs	82	often meaning <i>parishioner</i>	189
FRANCHISE,		IMPRISONMENT,	
whether conferred by pew rents	680,	for disobedience of prohibition	574
	688—690	IMPROPRIATOR,	
FREEHOLD,		right to chief seat in chancel	278
of church in the parson	129	INCUMBENT,	
gives no right to seats	106, 107	has freehold of church	129, 130
no hindrance to prescription	409	repairs chancel	81
FREE SEATS,		disposition of seats	183, 186—188
in old parish church,		seats for his family	233
in body of church	402, 429, 431, 432,	under Church-building Acts	597
	442	<i>trespass</i> against wardens	112
at disposition of ordinary	403	right to material of seats illegally	
contribution towards, a considera-		erected	119
tion in grant of faculty	342, 343	make no alterations without consent	
if formerly free, effect on claim		of bishop	27
by prescription	500	removing seats, is criminal act	110
surrender of rights in favour of	673	INHABITANCY,	
	—678	pews are in respect to	444
under Church-building Acts,		INHABITANT,	
proportion of free seats required	609	<i>See PARISHIONER.</i>	
—612, 614—621, 664, 665		INHIBITION,	
none necessary by subsequent Act	612	by Ecclesiastical Court	504
in substituted church	613	INSPECTION,	
church of united parishes	615, 616	of church by archdeacon	111
at a third service	617	INTIMATION,	
to be marked <i>free</i>	609	to decree citing parishioners	28
FUND,		present form of,	30
for repair	656	INTRUDER,	
GALLERY,		removal by warden	267
opposition to erection of	46, 47, 49—51	<i>See PERTURBATION.</i>	
building committee	45	JOINT TENANCY,	
pew in, vacates pew previously held	264	in pew, held under faculty	306
HATCHMENT,		under prescription	447, 448
effect on claim by prescription	499		
not removable	513		
HEIGHT OF SEAT,			
should be moderate	66		
reduced on complaint	67		

- | | Paragraph | | Paragraph |
|---------------------------------------|--------------------|--|------------|
| JURISDICTION, | | MONUMENT, | |
| over chapelry, formed from con- | | belongs to heir | 513, 515 |
| tiguous parishes | 601 | MOURNING-CLOTH, | |
| <i>See</i> ECCLESIASTICAL COURT. | | at cost of, belongs to, parish .. | 517 |
| <i>See</i> ORDINARY. | | MOVEABLE SEATS, | |
| <i>See</i> PROHIBITION. | | all at first moveable .. 14—17, | 125, 127 |
| KEY OF CHURCH, | | whether property of incumbent .. | 17, 125 |
| incumbent entitled to, | 112 | removable by owner | 93 |
| KING'S BENCH, | | NEW CHURCH, | |
| <i>See</i> QUEEN'S BENCH. | | seat accepted abandons seat in old | |
| LAND, | | church | 265 |
| whether pew appurtenant to .. | 443, 444 | <i>See</i> ALLOTMENT. | |
| LAPSE OF TIME, | | <i>See</i> LETTING. | |
| <i>See</i> POSSESSION. | | <i>See</i> REPAIRS. | |
| <i>See</i> PRESCRIPTION. | | <i>See</i> SEAT. | |
| LETTING SEATS, | | NOMINATION OF CLERGYMAN, | |
| in old parish church, | | by person building and endowing .. | 665 |
| reprehensible and illegal .. | 237, 238, | by trustees of subscribers .. | 663, 666 |
| 257—259 | | NON-PARISHIONER, | |
| faculty permitting letting, illegal | 314, | liability for necessities for church .. | 87 |
| 315 | | whether any right in seats | 5, 210 |
| under Church-building Acts, | | not by faculty | 311, 313 |
| intended at first to be temporary | 590, | seats in church of united parish | 182, 211 |
| 591 | | NOTICE, | |
| permitted for part of seats .. | 592 | of letting pews | 626 |
| what proportion may be let | 609—621 | NUISANCE, | |
| to whom | 624, 627, 634, 635 | unauthorized moveable seats .. | 18, 136 |
| <i>See</i> RENT. | | whether alterations in church are so | |
| LIABILITY TO REPAIR, | | to every parishioner | 209 |
| chancel by rector | 272, 280 | OBJECTIONS TO FACULTY. | |
| church and seats by parishioners .. | 189 | <i>See</i> FACULTY. | |
| mother church by district .. | 651, 652 | OCCUPANCY, | |
| LICENCE. <i>See</i> FACULTY. | | should be altered from time to time | 251 |
| LIGHT, | | wardens to prevent improper, .. | 172 |
| hindrance to, objection to grant of | | <i>See</i> POSSESSION. | |
| faculty | 62, 64, 337 | OPEN SEAT, | |
| LINING, | | formerly, adverse to prescription .. | 500 |
| pew, is not repair | 85, 484 | ORDINARY, | |
| LOAN, | | control over seats in cathedral .. | 4 |
| for cost of church-building and site | | in church .. 19, 137, 140, 142, 167, 191, | |
| charged on rents | 636, 643 | 403, 406, 455—457 | |
| effect on church-rate abolition .. | 88 | whether well founded | 137 |
| LOCK, | | in chancel | 160, 163 |
| of church-door, part of building .. | 121 | in chapel of ease | 145 |
| of pew, not to be broken | 231 | not in unconsecrated building .. | 146 |
| LONDON, | | half only in ch. of united parish | 144, 182 |
| custom with respect to chancel | 92, 158 | whether ousted by parish 90, 181, 449, 450 | |
| MATERIALS, | | authority exercised through wardens | 174 |
| of seats legally erected by parish .. | 117 | no jurisdiction in temp. right .. | 417, 418 |
| formerly held by prescription .. | 511—519 | faculty for erection of seats .. | 20, 21, 25 |
| erected without authority | 118, 119 | consent necessary for alterations .. | 97 |
| MONITION, | | sole judge of need of addition .. | 61 |
| to restore seats illegally altered .. | 110 | must exercise sound discretion .. | 355 |

	Paragraph		Paragraph
ORDINARY — <i>continued</i> .		PERTURBATION SUIT,	
decision subject to appeal ..	355	against rector, for chancel seat ..	467
protected by prohib. from other		against wardens ..	224
courts ..	524	a means to regain possession ..	231
<i>See ECCLESIASTICAL COURTS.</i>		burthen of proof on disturber ..	230
ORGAN,		presumption against him ..	460
belongs to parish ..	115	what evidence is necessary ..	468
trespass for removal of, ..	115	PETITION, SUMMARY,	
ORNAMENT,		convenient form of suit ..	29
considered on proposed alterations	36, 50	PEW,	
PARISH,		right to seat but not to pew ..	132
foundation at early date ..	8	prescription for priority in ..	502—504
often contemporaneous with manor ..	8	apportionable ..	306, 447
present divisions prior to Conquest	11	effect of enlargement ..	501
PARISH CLERK,		for incumbent's family ..	233, 597
removable from seat ..	269	for wardens ..	598
stipend out of rents	637—639, 641, 643	<i>See FAMILY.</i>	
PARISHIONERS,		<i>See SEAT.</i>	
when a person becomes a parishioner	201	<i>See USE.</i>	
right to seats and duty of repair ..	189	PEW-HOLDER,	
as to repair of chancel ..	92, 158	rights specified on division of parish	608
all entitled to seats in common	134, 135, 165, 194, 431	PEW-OPENER,	
right of each to seat, not pew ..	132	salary paid out of rents ..	646
preference under Ch.-build. Acts	627, 667	PEW-RATE.	
rights in absence to be observed ..	344	<i>See RENT.</i>	
allotment by bishop, to part only ..	167	PLANS,	
by parish independently ..	449, 450	of alterations proposed by faculty	57, 58
attention to wishes of, ..	31, 32	PLEA AND PROOF,	
where a majority obtained by canvas	43	in Ecclesiastical Court ..	29
wishes not conclusive with court ..	33	POOR,	
PAROCHIAL RIGHTS,		accommodation to be specially con-	
not usually conferred by use of cathed-		sidered ..	319—321, 342
ral ..	1	POSSESSION,	
if any in cathedral, transferable to		whether giving claim against war-	
new parish church ..	6, 369	dens and ordinary ..	212, 224—226
in proprietary chapel ..	583	leading to litigation and unjust	
<i>See PARISHIONERS.</i>		claims ..	213
PARSON.		liable to alteration ..	214, 215
<i>See INCUMBENT.</i>		good against disturber ..	213, 220, 223, 227, 228
PATRONAGE,		length of time necessary ..	221—223
under Church-build. Acts	611, 663, 666	only taken on authority ..	266
PAYMENT,		not regained by force ..	231
for seat in old parish ch. ..	227, 238, 243	ceasing with use or residence	256—259
gives no right to a seat ..	234	whether entitling to have pew kept	
not regarded by the court ..	241	vacant ..	232
PEER,		when continued after expiration of	
liable to attachment for contempt ..	576	faculty ..	216, 217
PERPETUAL CURATE,		for prescrip., beyond memory	392, 393
<i>See CURATE, PERPETUAL.</i>		indicating prescription ..	463—472
		insufficient for prescription where	
		origin known ..	470—472
		by incumbent's family ..	233
		without residence ..	473

POSSESSORY TITLE. Paragraph

See POSSESSION.

PREFERENCE,
to rank and station 165, 166, 168, 171,
190—194

PRESCRIPTION,
what it is .. 374—378, 381, 382
difficult to define 521
highest kind of title .. 372, 400
when proved is unalterable .. 400
a personal right 376
different periods in ecclesiastical
and temporal courts 418
of parish to erect and allot seats in-
dependently 449, 450
by founder for exemption from
church repairs 82
title to earliest fixed seats .. 14
to aisle or chapel 407—410, 429, 431, 432
for seats in chancel 155, 439
for rector's seat 436
distinction of aisle or chapel from
body of church .. 429—432, 442
seats in body of church 383—387, 402,
437, 440
presumed faculty originally 361, 388—
390, 438
as appurtenant to a house 440—442
divisible if house divided .. 447
to an estate 443—445
claimable by corporation .. 492
term to be used when relied on .. 391
occasions illegal claims .. 521
not now favoured .. 427, 456, 457
strictly construed 457

PRESCRIPTION, How triable ;
whether by *action on case* 416, 451, 453
or by *action for trespass* 451—454
ecclesiastical court cannot interfere
417—419, 421, 422
unless prescription be admitted .. 420
can proceed till prohibited .. 425

PRESCRIPTION, Proof ;
must be clearly proved .. 401, 428
not inconsistent with general right 401
distinction of body of church from
aisle or chapel 411, 412
as against bishop or parish .. 455
immemorial usage 391—399, 407, 408,
410
pleading as agst. stranger 458, 459, 489
what evidence is necessary .. 446
as against bishop 458, 486, 488, 491—
493
as against parish 462—464
against stranger 455

H. VOL. II.

PRESCRIPTION, Proof—*continued.* Paragraph

length of possession .. 463—472
repair .. 475—489, 491—493
entries in vestry books .. 497, 498
rent conclusive against claim .. 496
seat formerly open is adverse .. 500
where seat built or enlarged .. 494
presumption against a stranger .. 460

See POSSESSION.

PRESCRIPTION ACT,
whether affecting pews .. 413—415

PRESCRIPTIVE RIGHTS,
transferred to new or substituted
church 6, 368, 599, 600
discharged in church of united
parish 357
how abandoned 505—510
property in materials on abandon-
ment 511—519
recommended investigation of 366, 367

PRESENTMENT,
respecting pews and gallery .. 48

PRIORITY,
in pew may be prescribed for 502—504

PRIVATE ACTS OF PARLIAMENT,
See ACTS OF PARLIAMENT.

PRIVATE CHAPEL,
See CHAPEL, PRIVATE.

PRIVY COUNCIL,
representation to, touching probi-
tions 526

PROCEEDINGS,
in Ecclesiastical Court, form of, .. 29

PROHIBITION,
law only alterable by Parliament .. 579
in questions of prescription 177—179,
181, 419, 422
formerly too frequent .. 526
granted on affidavit .. 531, 550
not after consultation .. 573
absolute or *quousque* .. 530
whether *ex debito justitiæ* or *ex*
gratia 548, 561
enforced till superseded .. 574
punishment for disobedience 574, 576,
577

PROHIBITION, Grounds of,
general grounds .. 527, 531, 532
want of jurisdiction 527, 534, 536—539,
541
excess of jurisdiction 532, 543, 548
defect of trial 527, 532, 544—547
before sentence .. 551, 552, 565
after sentence 545—547, 566—571
after appeal 567

N

	Paragraph		Paragraph
PROHIBITION OF ECCLESIASTICAL COURTS,		RECTOR'S FAMILY,	
granted by various courts	525	whether entitled to seats in chancel	164
usually for defect of trial	425	REGULARITY OF SEATS,	
not if prescription admitted ..	528	in old parish church	66
not till temporal matters at issue	426, 552, 553	in church of united benefices ..	68
previous steps taken	551, 525	REMOVAL,	
in respect to faculty for alterations	557	of intruders by wardens	267—269
in suit for church bell and timber	540—542	of nave seat an ecclesiastical matter	116
in incidental matters	560	RENT OF PEWS,	
where plea of prescription rejected	563	in old parish churches under any	
unsound discretion of court ..	535	circumstances illegal	237, 238, 243
costs not grantable with prohibition	572	payment conclusive against claim	
to protect Ecclesiastical Courts ..	524	under faculty or by prescription	496
PROPERTY IN PEWS,		under Church-building Acts,	
not acquired by purchase ..	234, 236	introduced temporarily ..	500, 591
<i>See MATERIALS.</i>		none under Act of 1837	591
PURCHASE,		amount	622, 628—630, 667
of seats in parish churches illegal	228, 236, 238—245	when payable	623
confers no right	234, 236, 238—252	notice	626
whether a possessory title ..	228, 229	collected by wardens ..	620, 631
fact adverse to any claim ..	245	mode of recovery ..	632, 633
QUEEN'S BENCH,		charged with loan for building or	
power of prohibiting Ecclesiastical		site	636
Court	525	other application ..	637, 638, 640, 648
in matters of mixed nature ..	356	reduction, upon permanent endow-	
interference with bishop's discretion	356	ment	660, 662
respecting costs of Ecclesiastical		cessation on permanent endow-	
Court	79	ment	659, 661, 662
QUIET POSSESSION,		subscribers to third service	621, 635
bill will not lie for	423	upon Chapel of Ease becoming a	
except by consent	424	District Church	672
<i>See PERTURBATION.</i>		conferring franchise	680
RANK AND STATION,		<i>See LETTING.</i>	
modern rule of allotment according		RENT-CHARGE,	
to	165, 166, 168	as a repair fund	656
whether preference rightly given	190—194, 197	RENTERS OF PEWS,	
whether legal	194	elect one warden	668
objections to system ..	166, 171	REPAIR,	
RATES,		of cathedral	1
payment of, as consideration for		of parish church	12
allotment of seats	198	duty of parishioners ..	84, 186
<i>See CHURCH RATE.</i>		liability of non-inhabitants ..	87
REBUILDING,		of inhabitants of chapelry ..	83
of church, as to consecration upon,	147	prescription for exemption of	
of pews by parish, effect of	494, 495	founder	82
RECTOR,		of church of united parishes ..	86
repairing chancel	272, 280	whether any liability now ..	88
has chief seat in chancel ..	270—273	of aisle by parish, effect of	481, 487
particular part not specified ..	436	of corporation seats, chargeable to	
deprived of seat by Local Act	682, 683	borough	493
appointment of chancel seats	154—160	of chancel seats	91
		of seats, necessary to prescriptive	
		claim	458, 459, 475—489, 491—493
		whether necessary to be pleaded	475
			—477, 486

	Paragraph
REPAIR—continued.	
of parish church— <i>continued.</i>	
whether proof necessary ..	478, 479
repair by wardens cannot oust	
ordinary	90
what is repair	482—484
not lining and cushions	85
repair of one, repair to all held	
under same right	491
under Church-building Acts,	
repair of church payable out of	
rents	643, 646, 649
of pews, payable out of rents ..	649
fund for repairs	655, 656
of district church	650, 653, 654
of mother church by district	651, 652
RESIDENCE, HOUSE OF,	
fund for, out of rents ..	644, 647
REVERSION OF PEWS,	
to parish on abandonment, or on ex-	
piration of faculty	256, 261, 354
RIGHT,	
to attend church, by custom ..	12
of ecclesiastical dignitaries reserved	
by Church-building Acts	589, 596
under faculty or prescription trans-	
ferred	6, 368, 369, 599, 600
in case of parish being divided ..	608
may be surrendered	673—678
reviving to parish	354
SALE,	
of pews in default of payment of	
rent	633, 634
See PURCHASE.	
SEATS (and see PEW),	
in cathedral,	
permitted <i>ex gratia</i>	3, 4
regulated by bishop	4
in parish churches,	
none for congregation till 15th	
century	13, 124, 127
at first moveable	14, 127
removable if illegally placed	14, 15,
	94, 95
removable by proper authority	96, 98, 99
See MATERIALS.	
repairs by parish	80
in chancel,	
See CHANCEL.	
use and object of seats	133
allotment by bishop	137
See ALLOTMENT.	
all parishioners entitled to one	132, 194
non-parishioners in united-parish	
church	182
occupier should be changed ..	217

	Paragraph
SEATS—continued.	
in parish churches— <i>continued.</i>	
right not acquired by purchase or	
rent	234—236
how long kept vacant	232
jurisdiction when annexed to	
house	565
seats by prescription, severable ..	447
See PRESCRIPTION.	
surrender or cession of rights	256,
	673, 678
See ABANDONMENT.	
whether on rebuilding	494, 495
See FREE SEATS.	
structure to be regular	66
height moderate	66, 67
not interfering with appearance	
of building	69
under Church-building Acts,	
to whom allotted	625—627
offered first to parishioners ..	624
See ALLOTMENT.	
See LETTING.	
See RENT.	
See SALE.	
how long retained vacant	669
how allotment vacated	670, 671, 678
sold in default of payment of rent	633,
	634
become free on permanent endow-	
ment	659, 660, 662
for subscribers to third service	621, 635
free seats as convenient as the others	619
like others in united-parish church	68
See FREE SEATS.	
SENTENCE.	
See PROHIBITION.	
SPECIFIC SEAT,	
may be prescribed for	502—504
for rector, not any	436
SPIRITUAL COURT.	
See ECCLESIASTICAL COURT.	
STAR CHAMBER,	
decision respecting pews	562
STATION.	
See RANK AND STATION.	
STIPEND,	
of clergy and clerk charged on rents	638
	— 642
additional, paid out of rents	646—648
STRANGER,	
See NON-PARISHIONER.	
SUBSCRIBER,	
to ch.-building, advantages of,	624, 625

	Paragraph
SUBSCRIBER—continued.	
electing trustees	663
to third service	621, 635
SUBSTITUTED CHURCH,	
rights transferred	368, 600
commission on claims 368, 600, 603—	605
appeal from commission	606, 607
free seats	613, 641
seats let	641
SUMMARY PETITION,	
mode of proceeding in Eccles. Court	29
SURPLUS OF RENTS,	
application of	643—648
SURPRISE,	
revocation of faculty obtained by	299, 359
SURRENDER,	
of right to seats	673—678
TEMPORAL COURT,	
tries all questions of prescription ..	416—425
TENANCY OF PEW,	
<i>See</i> JOINT TENANCY.	
TENANTS OF HOUSES,	
right to seats annexed to house	302, 303, 446
not preferred to new comers	198, 259
THIRD SERVICE,	
appointed by bishop under Church-	
building Acts	617, 621
seats for subscribers	621, 635
TIMBER,	
cut in churchyard, matter for Com-	
mon Law	541, 542
TOMBSTONE,	
trespass for injuring	104
TRANSFER,	
of parochial rights to new church	6, 368, 369, 569, 600
of right to seats.	
<i>See</i> FACULTY.	
<i>See</i> PRESCRIPTION.	
<i>See</i> SUBSTITUTED CHURCH.	
TREES. <i>See</i> TIMBER.	
TRESPASS, Action of,	
for carrying away seat	14, 116, 191
breaking seat	98—103
removing intruder	268

	Paragraph
TRESPASS, Action of—continued.	
breaking into chapel	112, 113
breaking open church chest	539
removing organ	115
injuring tombstone or coat-armour	104, 105
TRUSTEES,	
elected by subscribers to church	
building	663, 666, 667
whether acquiring franchise from	
rents	688—690
UNAPPROPRIATED SEATS,	
in church of united parishes ..	357
<i>See</i> FREE SEATS.	
UNCONSECRATED BUILDING,	
Ecclesiastical Court has no power	
over seats	146
UNITED PARISHES,	
church of, how jurisdiction deter-	
mined	601
repaired by both	86
seats re-arranged under faculty ..	367
half unappropriated	615, 616
seats for non-parishioners, and	
under wardens' authority only ..	182
USE,	
of seats in the parishioners	123, 133
by all in common	131, 134, 135
must be proved by claimant of pre-	
scription	459
effect of non-user for twenty years	469
VACATION,	
prohibition issued by Chancery in ..	549
VAULTS,	
may be sold if rents insufficient ..	658
VESTRY,	
resolutions as affecting application	
for faculty 31—33, 36, 37, 40, 41, 43	
minute produced	31
books, whether evidence	497, 498
validity of grant of seat	341, 342
VICAR,	
right to chief seat in chancel ..	275
<i>See</i> INCUMBENT.	
WANT OF JURISDICTION,	
<i>See</i> PROHIBITION.	
WRONG-DOER,	
everything presumed against him ..	460

A
Catalogue
OF
LAW WORKS
PUBLISHED BY
MESSRS. BUTTERWORTH,
Law Booksellers and Publishers



TO THE QUEEN'S MOST EXCELLENT MAJESTY
AND TO
H.R.H. THE PRINCE OF WALES.

*"Now for the Laws of England (if I shall speak my opinion of them
"without partiality either to my profession or country), for the matter and
"nature of them, I hold them wise, just and moderate laws: they give to God,
"they give to Cæsar, they give to the subject what appertaineth. It is true
"they are as mixt as our language, compounded of British, Saxon, Danish,
"Norman customs. And surely as our language is thereby so much the richer,
"so our laws are likewise by that mixture the more complete."*—LORD BACON.

1872.
7, FLEET STREET, LONDON, E.C.

Index to Catalogue.

	PAGE		PAGE		PAGE
Accounts,		Civil Law.		Coroner.	
<i>Solicitors.</i> Coombe ..	27	Tomkins and Jencken	18	Baker	36
<i>Law of.</i> Pulling ...	36	Civil Service Exam.		Corporations,	
Actions at Law.		(Indian). Cutler ...	35	<i>In General.</i> Grant ...	22
Browne	38	Circumstantial Evidence.		<i>Municipal.</i> Sewell ...	37
Kerr	17	Wills	31	Costs,	
Lush	13	Code, English Law.		<i>Law of.</i> Gray ...	35
Williams	33	Blaxland	37	County Courts.	
Admiralty,		Collieries.		Davis	6
<i>Practice.</i> Coote ...	9	Bainbridge	33	<i>Equity and Bankruptcy.</i>	
<i>Prize Law.</i> Lushington	27	Colonial Law.		Davis	6
Aliens.		Barbados	35	Criminal Law.	
Cutler	11	South Australia ...	35	Davis	34
Arbitrations.		Commentaries.		Oke	24
Redman	8	Stephen's Blackstone's	4	Curates. Field ...	28
Arbitrations (Masters		Commercial,		Customs.	
and Workmen).		<i>Law.</i> Chitty	37	Hamel	39
Lovey	27	<i>Treaties.</i> Hertslet ...	28	Deeds.	
Articled Clerk.		<i>Forms.</i> Crabb	20	Tudor	17
Examination Journal	5, 39	Common Form Practice.		Descents.	
<i>Handy Book.</i> Mosely	21	Coote	7	Fearne	37
<i>Student's Guide.</i>		Common Law,		Divorce.	
Benham	17	<i>At Chambers.</i>		<i>Practice.</i>	
Attachment,		Parkinson	26	Browning	23
<i>Foreign.</i> Brandon ...	23	Costs.		Drainage.	
Australia.		Gray	35	Woolrych	22
Torrens	35	<i>Pleading.</i>		Easements.	
Awards.		Chitty, jun.	22	Latham	18
Redman	8	Greening	36	Washburn	36
Banking.		Williams	33	Ecclesiastical,	
Grant	26	<i>Practice.</i>		<i>Practice.</i>	
Keyser	37	Dixon	13	Coote	36
Bankruptcy.		Kerr	17	<i>Judgments.</i>	
Bulley & Bund ...	27	Lush	13	Burder v. Heath ...	38
Linklater	36	Compensation,		Hebbert v. Purchas	38
Robson	39	<i>Law of.</i>		Long v. Cape Town	38
Bar.		Ingram	11	Martin v. Mackonochie	38
Pearce	35	Shelford	25	Westerton v. Liddell	38
Smith	34	Consolidation Acts.		Election,	
Bar Examination		Shelford	25	<i>Law.</i> Davis	23
Journal	5, 39	Constitution.		England,	
Barbados, Law of	35	May	29	<i>Laws of.</i>	
Belligerents.		Stephen	4	Blackstone	4
Hamel	35	Contraband of War.		Francillon	35
Phillimore	19	Deane	36	Stephen	4
Bills of Exchange.		Moseley	36	English Bar.	
Grant	26	Contracts,		Pearce	35
Blackstone.		<i>Specific Performance.</i>		Smith	34
Stephen's	4	Fry	30	Equity,	
Blockade. Deane ...	36	Conveyancing,		<i>Doctrine and Practice of.</i>	
Bookkeeping, Solicitors'.		<i>Introduction to.</i>		Goldsmith	6
Coombs	27	Lewis	16	Draftsman. Lewis ...	16
Boundaries. Hunt ...	10	<i>Practice.</i>		Pleader. Drewry ...	29
Brokers. Keyser ...	37	Barry	15	<i>Suit in.</i> Hunter ...	16
Carriers,		Rouse	12	<i>See Chancery.</i>	
<i>Inland.</i> Powell ...	34	Smith	31	Evidence,	
<i>Railway.</i> Shelford ...	25	Tudor	17	<i>Circumstantial.</i> Wills	31
Chamber Practice,		<i>Forms.</i>		<i>County Court.</i> Davis	6
<i>Common Law.</i>		Christie	20	<i>Law of.</i> Powell ...	32
Parkinson	26	Crabb	20	<i>Wills.</i> Wigram ...	33
Chancery Practice.		Rouse	12	Examinations.	
Goldsmith	6	Shelford	20	<i>Preliminary.</i>	
Hunter	16	Convictions (Summary),		Benham	17, 40
<i>Drafting.</i> Lewis ...	16	<i>Synopsis of.</i> Oke ...	24	Journal	5, 39
Channel Islands.		<i>Forms.</i> Oke	24	<i>Intermediate and Final.</i>	
Bowditch	36	Co-operative Societies.		Mosely	21
Charitable Trusts.		Brabrook	12	Fences.	
Tudor	18	Copyholds,		Hunt	10
Church Building.		<i>Enfranchisement.</i>		Fisheries. Oke ...	24
Trower	28	Rouse	21	Fixtures. Brown ...	14
		<i>Law of.</i>		Foreshores.	
		Scriven	23	Hunt	10
				Williams v. Nicholson	35

Forms,	PAGE		PAGE		PAGE
<i>Conveyancing.</i> Crabb ..	20	Lunacy. Phillips ..	30	Railways.	
<i>Magisterial.</i> Oke ..	12	Magisterial Law,		Redfield ..	36
<i>Pleading.</i> Greening ..	36	Acts. Davis ..	34	Shelford ..	25
<i>Probate.</i> Chadwick ..	26	Practice. Oke ..	24	<i>Compensation.</i> Ingram ..	11
Friendly Societies.		Forms. Oke ..	24	<i>Carriers.</i> Powell ..	34
Brabrook ..	12	Maritime Warfare.		Real Property.	
Gains' Roman Law ..	19	Deane ..	36	Tudor ..	17
Game Laws. Oke ..	24	Hamel ..	35	<i>Chart.</i> Fearne ..	37
Gaming. Edwards ..	37	Marriage Acts. Burn ..	37	Referees' Court Practice.	
Gas Companies Acts..	29	Master and Servant.		Clifford & Stephens ..	14
Gavelkind. Robinson ..	37	Davis ..	22	Registration. Davis ..	23
Guernsey (Law of).		Master and Workmen.		Religion.	
Bowditch ..	36	Lovesy ..	27	Church and State ..	38
Highways. Glen ..	30	Mercantile Accounts.		Supremacy of Crown ..	38
House of Lords,		Pulling ..	36	Religious Confession.	
<i>Practice.</i> May ..	29	Militia Laws. Dwyer ..	37	Badeley ..	38
<i>Digested Index to Cases.</i>		Mines and Minerals.		Ritual.	
Clark ..	15	Bainbridge ..	33	Bayford ..	38
Idiots. Phillips ..	30	Mortgages.		Bullock ..	38
Indian Penal Code.		Fisher ..	9	Hamel ..	38
Cutler and Griffin ..	34	Rouse ..	12	Phillimore ..	38
Indian Statute Law.		Municipal Elections.		Roman Law.	
Field ..	34	Sewell ..	37	Galus ..	19
Industrial and Provid-		Naturalization. Cutler ..	11	Ortolan ..	10
ent Societies.		Negligence. Saunders ..	11	Tomkins ..	10
Brabrook ..	12	Neutrals.		Tomkins and Jencken ..	18
International Law.		Phillimore ..	19	Savings Banks. Grant ..	26
Deane ..	36	Nisi Prius. Leigh ..	36	Sciences (the) and Law ..	35
Hamel ..	35	Nuisances. Glen ..	31	Sea Shore. Hunt ..	10
Phillimore ..	19	Parliamentary.		Settlements,	
Irish Land Act. Butt ..	31	Clifford & Stephens ..	14	<i>Voluntary, &c.</i> Cutler ..	35
Jersey (Law of).		Davis ..	23	<i>Voluntary.</i> Hunt ..	39
Bowditch ..	36	May ..	29	Sewers. Woolrych ..	22
<i>Banks.</i> Grant ..	26	Partnership.		Sheriff. Sewell ..	37
<i>Companies.</i> Shelford ..	7	Dixon ..	13	Sheriff's Court. Davis ..	6
Jurisprudence.		Pothier ..	37	Short Hand. Gurney ..	36
<i>Form of Law.</i> Holland ..	32	Patents.		Slander. Starkie ..	14
Law Magazine ..	40	Norman ..	35	Solicitors' Bookkeeping.	
Justice of Peace. Oke ..	24	Peerage Claim.		Coombs ..	27
Land Settlement, An-		Finlason's Wiltis ..	35	Specific Performance.	
cient ..	36	Lemarchant's Gardner ..	35	Fry ..	30
Landlord and Tenant.		Petty Sessions. Oke ..	24	Stock Exchange. Keyser ..	37
Fawcett ..	8	Pleading,		Succession Duty.	
Law Exam. Journal ..	5, 39	<i>Common Law.</i>		Shelford ..	21
Law Magazine ..	40	Chitty. Jun. ..	22	Summary Convictions.	
Law Studies.		Greening ..	36	Oke ..	24
Cutler's Lecture ..	35	Williams ..	33	Suit in Equity. Hunter ..	16
Francillon ..	35	<i>Equity.</i> Drewry ..	29	Tenant, Landlord and.	
Mosely ..	21	Lewis ..	16	Fawcett ..	8
Smith ..	34	<i>Guide.</i> Anstey ..	37	Tithes. Schomberg ..	37
Stephen's Blackstone ..	4	Poor Law Orders ..	25	Trades Unions.	
Leading Cases,		Precedents,		Brabrook ..	12
<i>Real Property.</i> Tudor ..	17	<i>Conveyancing.</i>		Treaties. Hertslet ..	23
Leases.		Crabb ..	20	Trusts, Charitable.	
Crabb ..	20	Rouse ..	12	Tudor ..	18
Rouse ..	12	Preliminary Examina-		Turnpike Laws. Oke ..	24
Legacy Duties.		tion Journal ..	40	Vendors & Purchasers.	
Shelford ..	21	Priority. Fisher ..	9	Seaborne ..	15
Legitimacy.		Private Bills. May ..	29	Water Companies Acts ..	29
Gardner Peerage ..	35	Prize Law. Lushington ..	27	Waters. Hunt ..	10
Life Assurance.		Probate,		Wills.	
Blayney ..	37	<i>Practice.</i> Coote ..	7	Coote ..	7
Libel. Starkie ..	14	<i>Forms.</i> Chadwick ..	26	Crabb ..	20
Local Government.		<i>Duties.</i> Shelford ..	21	Rouse ..	12
Glen ..	31	Provident Societies.		Tudor ..	17
Lords Chancellors, &c.,		Brabrook ..	12	Wigram ..	33
<i>Catalogue of.</i> Hardy ..	37	Public Health.		Winding-up.	
Lord Mayor's Court.		Glen ..	31	Grant ..	26
Brandon ..	31	Questions		Shelford ..	7
		On Stephen's Comments. ..	4	Window Lights.	
				Latham ..	18

Stephen's Blackstone's Commentaries.—Sixth Edition.

4 vols. 8vo., £4: 4s. cloth.

MR. SERJEANT STEPHEN'S NEW COMMENTARIES ON THE LAWS OF ENGLAND, partly founded on Blackstone. The Sixth Edition, by JAMES STEPHEN, LL.D., of the Middle Temple, Barrister-at-Law, formerly Recorder of Poole, and late Professor of English Law at King's College, London; now Judge of County Courts for Lincolnshire Circuit No. 17.

"It would be impossible, without entering minutely into details, to notice at any length this most valuable work. It is one which cannot be too highly recommended, not only to the profession but to the general public. It is a great mistake to act upon the notion that the study of the law is a matter of interest to lawyers only. Now there is no work which gives a summary of the English law at once so exhaustive and intelligible to the general reader as this publication of Dr. Stephen. He has incorporated into it all those portions of Blackstone's great work which would at the present day be useful to the reader." *Law Magazine*.

"To redeem Blackstone from oblivion, it became necessary that his work should be edited by a lawyer as able and a scholar as graceful as Blackstone himself. Mr. Serjeant Stephen, more than twenty years ago, conceived the happy thought of introducing the necessary alterations into the text itself, and, as he says in his preface, 'interweave his own composition with it as freely as the purpose of general improvement it might seem to require.' The first edition was favorably received, acknowledged at once as an able reproduction of an invaluable treatise on English law, and has since passed rapidly through successive editions, till it has become the acknowledged students' text book, and is accepted by the critics as a standard work. Mr. James Stephen, a no less distinguished and painstaking legal writer than his father, has with equal skill and research, superintended the later editions, made the amendments rendered necessary by alterations in the law, and incorporated and commented upon recent statutes, judgments and decisions with as good an arrangement, as bold a grasp, and with as much felicity of style, adapted to and reading smoothly with that portion of Blackstone's text which still remains, as his predecessor in the same path; and the four volumes now published may be safely regarded as a full exposition and a sound authority on English law to the present time."—*Law Journal*.

"This new edition of the well known Stephen's Commentaries deserves a cordial welcome, for few years have been more eventful in legislation than those which have passed since the publication of the fifth edition. The skill with which the new matter is incorporated with the old is particularly remarkable, and in spite of the incongruity of the materials, and the threefold authorship of Blackstone, Serjeant Stephen, and the present editor, the result is perfectly homogenous and satisfactory. Indeed the 'noting up' appears to have been

done throughout with much ingenuity and industry, and the alterations, great and small, to have been made with excellent judgment. We have no doubt that the work will in its most recent shape retain all its original popularity. We very sincerely recommend this standard text book to all members of the profession. To the student it is simply invaluable, but it is also a useful companion to the most experienced lawyer."—*Solicitors' Journal*.

"The popular notion of the study of law is, that it is dry. No person who reads these Commentaries will call it so. It is a fascinating book. After six editions, it is impossible to say anything new of a standard work like this. We can but repeat that Stephen's Blackstone is indispensable, not to the law student alone, but to all who take part in public affairs, and especially to magistrates, who ought to be examined in it before they are permitted to sit upon the bench. Nay, it may be affirmed that no gentleman can be considered properly educated unless he has acquired so much knowledge of the law of England as is contained in Blackstone noted up by Stephen."—*Law Times*.

"How careful Mr. James Stephen, the present able editor, is to continue this work may by reference be ascertained. Mr. Serjeant Stephen, by his great ability, by his unwearied industry, his simplicity and clearness of diction has made himself the first tutor to English law students. With a knowledge of the existence of these Commentaries, the student need not ask, with what work am I to commence my legal studies? Here he will find every branch of English law ably treated on. Not only is the work an essential to the beginner, but it will be found of the greatest use at all times, as well after as before call or admission. Any praise on our part of such a work is wholly unnecessary; as we have before remarked, we feel assured we need do nothing more than announce a new edition, to cause an eager demand amongst all law students, and indeed amongst every one wishing to gain an insight into the laws of his country."—*Law Examination Reporter*.

"A very valuable feature is the reference made to the cases on each point. This constitutes the work a law library on a small scale. It is a book which is indispensable to every student of the law, whilst practitioners will find it to their advantage to consult it frequently, since they will find therein the law laid down scientifically, concisely, and, above all, accurately."—*Irish Law Times*.

Questions on Stephen's Blackstone.

8vo., 10s. 6d. cloth.

QUESTIONS FOR LAW STUDENTS on the SIXTH EDITION of Mr. SERJEANT STEPHEN'S NEW COMMENTARIES on the LAWS OF ENGLAND. By JAMES STEPHEN, LL.D., County Court Judge.

"Nothing can be more useful than a series of questions on a book like Stephen's Blackstone, intended as it is principally for the use

of students, and touching as it does on every branch of the law."—*Law Magazine*.

THE BAR EXAMINATION JOURNAL.

Edited by A. D. TYSSSEN and R. K. WILSON, Esquires,
Barristers at Law.

Nos. 1 and 2, TRINITY and MICHAELMAS TERMS, 1871.

Published in Numbers, 8vo., at 3s. each, by post 3s. 1d., in Trinity and Michaelmas Terms in each year. Nos. 1 and 2 are now ready for Trinity and Michaelmas Terms, 1871, and contain—

Subjects of Bar Examination. Examination Papers, with the Answers.

ENGLISH LAW:—Constitutional Law and Legal History; Equity; Common Law; Real Property; Jurisprudence, &c.; General Paper.

INDIAN LAW:—Hindu Law; Mahomedan Law; Penal Code; Criminal Procedure Code; Civil Procedure Code; Succession Act; General Paper.

THE LAW EXAMINATION JOURNAL AND LAW STUDENT'S MAGAZINE.

Published on the morning of the second day after each respective Final Examination in Hilary, Easter, Trinity and Michaelmas Terms in each year. Each Number price 1s., by post 1s. 1d.; or annual subscription, payable in advance, 4s., by post 4s. 4d.

CONTENTS.

No. 1. Michaelmas, 1869.—I. County Courts, their Merits and Defects as Local Tribunals: By the Editor. II. Summary of new Decisions in Banco and at Nisi Prius. III. Analysis of the more important practical Statutes of 32 & 33 Vict. IV. Intermediate Examination Questions and Answers (T. T. 1869). V. Final Examination Questions and Answers (M. T. 1869). VI. Notes on the Examinations. VII. Correspondence.

No. 2. Hilary, 1870.—I. Note by the Editor. II. On Attornment in Mortgages. III. Digest of important recent Decisions. IV. Intermediate Examination Questions and Answers (M. T. 1869). V. Final Examination Questions and Answers (H. T. 1870). VI. Correspondence.

No. 3. Easter, 1870.—I. On the Fusion of the Two Branches of the Profession: By the Editor. II. Digest of important recent Decisions. III. Intermediate Examination Questions and Answers (H. T. 1870). IV. Final Examination Questions and Answers (E. T. 1870). V. Reviews of New Books. VI. Correspondence.

No. 4. Trinity, 1870.—I. Leading Article on the Fusion of the Two Branches of the Legal Profession: By the Editor (concluded). II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Easter, 1870). IV. Final Examination Questions and Answers (Trinity, 1870). V. Reviews of New Books. VI. Correspondence.

No. 5. Michaelmas, 1870.—I. On the Legislation of 1870: By the Editor. II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Trinity, 1870). IV. Final Examination Questions and Answers (Michaelmas, 1870). V. Reviews of New Books. VI. Correspondence.

No. 6. Hilary, 1871.—I. Our Jury System: By the Editor. II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Michaelmas, 1870). IV. Final Examination Questions and Answers (Hilary, 1871). V. Reviews of New Books. VI. Correspondence.

No. 7. Easter, 1871.—I. Some Remarks on the Married Women's Property Act, 1870: By the Editor. II. Digest of important Legal Decisions. III. Intermediate Examination Questions and Answers (Hilary, 1871). IV. Final Examination Questions and Answers (Easter, 1871). V. Reviews of New Books. VI. Correspondence.

No. 8. Trinity, 1871.—I. On the Necessity of providing a Public Prosecutor: By the Editor. II. How Mr. Mansfield Denman passed his "Final." By E. H. III. Digest of Cases: Note by the Editor. IV. Intermediate Examination Questions and Answers (Easter, 1871). V. Final Examination Questions and Answers (Trinity, 1871). VI. Correspondence, &c.

No. 9. Michaelmas, 1871.—I. On Examinations. II. The Subject of Public Prosecutors (continued). III. Digest of Cases. IV. Intermediate Examination Questions on Chitty, Williams and Smith, Trinity, 1871, with Answers. V. Final Examination Questions and Answers, Michaelmas Term, 1871. VI. Reviews of Books. VII. Answers to Correspondents.

No. 10. Hilary Term, 1872.—I. Notice of the late Editor. II. The Study of the Law. III. Digest of Cases. IV. Intermediate Examination Questions and Answers. V. Final Examination Questions and Answers. VI. Answers to Correspondents.

Davis's Equity and Bankruptcy in the County Courts.

Just ready, 8vo., cloth.

The JURISDICTION and PRACTICE of the COUNTY COURTS in EQUITY (including FRIENDLY SOCIETIES), ADMIRALTY, PROBATE of WILLS, ADMINISTRATION, and in BANKRUPTCY. By J. E. DAVIS, of the Middle Temple, Esq., Barrister-at-Law.

. This work, although issued separately, forms a Supplementary or Second Volume to the Fourth Edition of Davis's County Courts Practice and Evidence in Actions.

Davis's County Courts Practice and Evidence.—4th Edit.

8vo. 36s. cloth.

THE PRACTICE and EVIDENCE in ACTIONS in the COUNTY COURTS. By JAMES EDWARD DAVIS, of the Middle Temple, Esq., Barrister-at-Law.

. This is the only work on the County Courts which gives Forms of Plaints, and treats fully of the Law and Evidence in Actions and other Proceedings in these Courts.

"Mr. Davis's work has grown with the growth of his subject, and has stood almost as long a trial as the County Courts themselves. The chapters on Evidence, clearly and tersely written, will repay the perusal of every common law practitioner, whether in the County or the Superior Courts. The book is altogether thoroughly well turned out down to its ready-cut pages, for which innovation all persons, especially reviewers, will thank the publishers."—*Law Journal*.

"It was because these instructions were so full and accurate that Mr. Davis succeeded in so easily establishing his work as the Practice of the County Courts, and in maintaining the position he had won. All who have used it speak well of it. They say they can readily find what they want, and, better still, it contains the information they want, which cannot be said of all books of practice. This has been Mr. Davis's design in his *Practice of the County Courts*."

"It is undoubtedly the best book on the Practice of the County Courts."—*Law Times*.

"A text book which is well known in both branches of the Legal Profession. From a small beginning it has gradually grown into a bulky volume, and now contains an exhaustive exposition of the Law and Practice relating to the County Courts. The third part of this manual contains a valuable digest of the Law of Evidence as applicable to the procedure of the County Courts. In this particular it certainly excels all the other text books on the subject. The importance of this part of the work cannot be too highly estimated."—*Law Magazine*.

"This is a greatly enlarged edition of Davis's County Court Practice, a work well enough known to need no introduction to the legal public, or at any rate to that portion thereof which is concerned with proceedings in the County Courts. We can safely and heartily recommend the book for the perusal of all intending practitioners in any County Court."—*Solicitors' Journal*.

Goldsmith's Equity.—Sixth Edition.

Post 8vo. 18s. cloth.

THE DOCTRINE AND PRACTICE OF EQUITY; or a concise Outline of Proceedings in the High Court of Chancery, designed principally for the Use of Students. Sixth Edition, according to the recent Statutes and Orders. By GEORGE GOLDSMITH, Esq., M.A., Barrister-at-Law.

"A well-known law student's book, the best, because the most thoroughly complete, yet simplified instructor, in the principles and practice of equity that has ever been provided for him; and that its value has been recognized by those who have made use of it is proved by this—that their commendations have carried it to a sixth edition. The principles of equity are as they were, but the practice has so changed since the publication of the first edition, that every part of this division of the work has required to be rewritten almost as often as a new edition was demanded. Of course, the size of the book has grown also, and from being, as we remember it, a very little book, to be carried in the pocket, it has become a portly volume, and this fairly represents its increased merits. Now that every student aspiring to the bar is to be examined before admission, good books for instruction in the law will be more than ever in request."—*Law Times*.

"It is difficult to know which to praise most, the excellence and dignity of the style, or the exhaustiveness of the information furnished to the reader. Mr. Goldsmith's plan corresponds to

some extent with that adopted by Mr. Haynes in his excellent 'Outlines of Equity'; but his work is more complete than that of Mr. Haynes."—*Law Examination Journal*.

"The whole work is elaborated by Mr. Goldsmith with evident care and a determination to deal with all that can come within the scope of the title. It is characterized by comprehensiveness and at the same time conciseness, by clearness of diction and attractiveness of style and avoidance of technicalities which might prove embarrassing to the student, and a close adherence to the purpose as expressed in the preface. Mr. Goldsmith's volume is marked by as much originality as well can be found in a work of its kind."—*Law Journal*.

"Altogether the author's method and his execution are alike commendable—and we are of opinion that the lawyer, who, as a student, avails himself of the primary intention of Mr. Goldsmith's work by finding in it his first equity reading book or primer, will afterwards verify the anticipation of the author by making of it *directus jurisdicti* or *vade meum* in his later practice."—*Law Magazine*, 2nd notice.

Coote's Probate Court Practice.—Sixth Edition.

8vo., 25s. cloth.

THE PRACTICE of the COURT of PROBATE in COMMON FORM BUSINESS. By HENRY CHARLES COOTE, F.S.A., Proctor in Doctors' Commons, &c. Also a Treatise on the Practice of the Court in Contentious Business. By THOMAS H. TRISTRAM, D.C.L., Advocate in Doctors' Commons, and of the Inner Temple. Sixth Edition, with great Additions, and including all the Statutes, Rules, Orders, &c., to the present Time; together with a Collection of Original Forms and Bills of Costs.

"In 1858 Mr. Coote published a first attempt to explain the principles which were to regulate the Common Form Practice of the then new Court of Probate. Very welcome, indeed, therefore, was his opportune book of practice, and its utility has been significantly proved by the fact that we have the sixth edition now before us bound up with Dr. Tristram's treatise on the Practice of the Court of Probate in Contentious Business."—*Law Magazine*.

"A book of practice that has arrived at a sixth edition needs no praise. The fact itself is the best certificate of worth; for practitioners would not have continued to use it if it had not been found entirely adapted for their requirements. Of course this has followed the course of all law books and grown in bulk with each successive edition, as new statutes, new rules of practice, and new decisions accumulate year by year. But the authors have not been content with mere addition; they have performed diligently the no less important work of paring down redundancies and excising the law that has become extinct

through subsequent changes. It is *the* book on its subject, and that is the highest praise that can be given to it."—*Law Times*.

"Every year the legal arena of probate practice extends itself, and the business which was up to the end of the year 1857 a monopoly in the hands of the ancient proctors has now become the common property of the profession. It is no marvel, then, that the book before us has in twelve years run through five editions, and that the new year of 1871 ushers in the sixth. Neither the authors nor the publishers would care to deny, that this substantial success is due, in a great measure, to the pressing need that has existed for a guide to probate practice; but we may also venture to declare, that the success of the work has been brought about as much by its own intrinsic excellence as by the great demand for a work of the kind. Coote's 'Probate Practice' has been the standard work for twelve years, and we see no reason to doubt that it will maintain its present position for many years to come."—*Law Journal*.

Shelford's Companies.—2nd Edit. by Pitcairn and Latham.

8vo., 21s. cloth.

SHELFORD'S LAW OF JOINT STOCK COMPANIES; containing a Digest of the Case Law on that subject; the Companies Acts, 1862, 1867, and other Acts relating to Joint Stock Companies; the Orders made under those Acts to regulate Proceedings in the Court of Chancery and County Courts, and Notes of all Cases interpreting the above Acts and Orders. Second Edition, much enlarged, and bringing the Statutes and Cases down to the date of publication. By DAVID PITCAIRN, M.A., Fellow of Magdalen College, Oxford, and of Lincoln's Inn, Barrister-at-Law; and FRANCIS LAW LATHAM, B.A., Oxon, of the Inner Temple, Barrister-at-Law, author of "A Treatise on the Law of Window Lights."

"We may at once state that, in our opinion, the merits of the work are very great, and we confidently expect that it will be at least for the present the standard manual of joint stock company law. That great learning and research have been expended by Mr. Pitcairn no one can doubt who reads only a few pages of the book; the result of each case which has any bearing upon the subject under discussion is very lucidly and accurately stated. We heartily congratulate him on the appearance of this work, for which we anticipate a great success. There is hardly any portion of the law at the present day so important as that which relates to joint stock companies, and that this work will be the standard authority on the subject we have not the shadow of a doubt."—*Law Journal*.

"After a careful examination of this work we are bound to say that we know of no other which surpasses it in two all-important attributes of a law book: first, a clear conception on the part of the author of what he intends to do and how he intends to treat his subject; and secondly, a consistent, laborious and intelligent adherence to his proposed order and method. All decisions are noted and epitomised in their proper places, the practice-decisions in the notes to Acts and Rules, and the remainder in the

introductory account or digest. In the digest Mr. Pitcairn goes into everything with original research, and nothing seems to escape him. It is enough for us that Mr. Pitcairn's performance is able and exhaustive. Nothing is omitted, and everything is noted at the proper place. In conclusion we have great pleasure in recommending this edition to the practitioner. Whoever possesses it, and keeps it noted up, will be armed on all parts and points of the law of joint stock companies."—*Solicitors' Journal*.

"Although nominally a second edition of Mr. Shelford's treatise, it is in reality an original work, the form and arrangement adopted by Mr. Shelford have been changed, and, we think, improved by Mr. Pitcairn. A full and accurate index also adds to the value of the work, the merits of which, we can have no doubt, will be fully recognized by the profession."—*Law Magazine*.

"This book has always been the *vade mecum* on company law, and will, apparently, long continue to occupy that position. It is perhaps even more useful to the legal practitioner than to the man of business, but still it is the best source of information to which the latter can go."—*Financier and Money Market Review*.

Redman's Law of Arbitrations and Awards.

8vo., 12s. cloth.

A CONCISE TREATISE on the LAW of ARBITRATIONS and AWARDS, with an Appendix of Precedents and Statutes. By JOSEPH HAWORTH REDMAN, of the Middle Temple, Esq., Barrister-at-Law.

"A singular feature in this work is, that it has no foot notes, and this is a decided recommendation. Mr. Redman goes straight through his task, and gives his cases at the end of his propositions. Commencing with a brief introduction, his second chapter treats of who may be parties to a reference, and each succeeding chapter, divided into sections, subheads the successive steps in the process of arbitrament. The ques-

tion of costs, which is apt to cause difficulty, is very clearly put before the reader, and indeed the chief merit of the work is the singular lucidity with which the law is expounded. We give the work all the praise which it can claim when we say that the arrangement is good, the style clear, and the work exhaustive. There is a useful appendix of precedents and statutes, and a very good index."—*Law Times*.

Fawcett's Law of Landlord and Tenant.

8vo., 14s. cloth.

A COMPENDIUM of the LAW of LANDLORD and TENANT. By WILLIAM MITCHELL FAWCETT, of Lincoln's Inn, Esq., Barrister-at-Law.

"This new compendium of the law on a wide and complicated subject, upon which information is constantly required by a vast number of persons, it sure to be in request. It never wanders from the point, and being intended not for students of the law, but for lessors and lessees and their immediate advisers, wisely avoids historical disquisitions, and uses language as untechnical as the subject admits. It may safely be assumed to contain information on all the ordinary questions which either contracting party may require to be answered."—*Law Journal*.

"The author has succeeded in compressing the whole of his subject within the reasonable compass of 373 pages. It may roughly be said of Mr. Fawcett's work, that it is statutory throughout, in accordance with the predominant character of the law at the present day; and Mr. Fawcett takes advantage of this characteristic of modern law to impart to his compendium a degree of *authenticity* which greatly enhances its value as a convenient medium of reference, for he has stated the law in the very words of the authorities. We have discovered plain utility to be the aim and end of Mr. Fawcett's treatise, and an ambitious merit to be that of Mr. Smith and Mr. Soden's. Probably we should be justified in saying that Mr. Fawcett has more nearly reached his aim, lower as it is, than Mr. Smith and Mr. Soden."—*Law Magazine*.

"The first thing which strikes us with regard to Mr. Fawcett's book is the extreme terseness and verbal accuracy of the language employed. In this respect he sets a most laudable example to text book writers. The amount of information compressed into the book is very large. The plan of the book is extremely good, and the arrangement adopted has enabled the author to put together in one place the whole law on any particular branch of the subject, and to avoid repetitions. Thus not only is it easy to find what the author has to say on any particular point, but when we have found a reference to it in one place, we may be satisfied that we have found all the book contains upon the point. In this respect, though probably from its smaller size it must contain less information than Woodfall, it will be found far more convenient for ordinary use than that treatise, in which repetitions are so frequent that a hasty searcher usually fails to find anything like all that is contained in it upon his point. The excellence of Fawcett in this respect will make it more convenient for noting new cases, as the right place for inserting them will be found without much difficulty. Moreover, every possible assistance by marginal notes, index, headings of chapters, &c., is given for finding the contents of the book. We find far more repetitions in Mr. Cave's than in Mr. Fawcett's work, and more cases in which the whole

law on any point has to be looked for, not in one place but in several; in this respect, therefore, Mr. Fawcett's book has an advantage. We may add that Mr. Fawcett's references are usually given to two sets of reports, while Mr. Cave's are to one only."—*Schlesinger's Journal*.

"Woodfall was, and perhaps is, the great authority on this subject. But his book is bulky, much of it is obsolete, and much useless, and the legislature and the judges have made many changes which sufficiently justify Mr. Fawcett in his undertaking of a new treatise on a subject of such wide-spread interest. His aim, however, is condensation. He contents himself with a plain statement of the existing law, prudently omitting all matters of merely historical interest and topics collateral to the special subjects; he has deemed it unnecessary to treat of the details of judicial procedure, or to enact a mass of precedents of leases which are already possessed by the profession in other works. Above all, it has been his purpose to state the law in the language of the authorities, presenting the principles enunciated in the very words of the judges. Another excellent feature is a concise summary of the effect of each enactment in the marginal notes. It will be seen from this that the book is thoroughly practical, and, as such, will doubtless find a favorable reception from the profession."—*Law Times*.

"This is a work which we can confidently recommend to the notice not only of the members of the legal profession, but to such of our general readers as have anything to do with the letting of either houses or land. In the carrying out of this task he has, to our minds, been very successful. The arrangement of the work is good, the style is clear and concise, and the range of authorities unusually wide. In the appendix Mr. Fawcett inserts forms of short leases, which will be found useful."—*Public Opinion*.

"Giving a clear and practical view of the subject, unembarrassed by historical associations or unnecessary details of procedure, but presenting the existing law in a form as intelligible to the public as useful to the lawyer; the references are plentiful, and the indices all that they should be."—*Daily Telegraph*.

"A Compendium of the Law of Landlord and Tenant, by Mr. William Mitchell Fawcett, seeks to present its existing state in the most condensed and practical manner."—*Times*.

"To disencumber the law of landlord and tenant of surplus words and tedious arguments is a worthy and useful design, and it is skilfully accomplished in the work before us. It is a comprehensive exposition of the important subject of the law of landlord and tenant, and cannot fail to be appreciated and generally referred to."—*News of the World*.

Fisher's General Law of Mortgage.—Second Edition.

Two vols. royal 8vo., 55s. cloth.

THE LAW of MORTGAGE, and other Securities upon Property. By WILLIAM RICHARD FISHER, of Lincoln's Inn, Esq., Barrister at Law. Second Edition, very considerably enlarged.

"For a length of time it has been received as the best text book on the law of mortgages, and it has recently received the honours of a second edition. We have never been niggards towards Mr. Fisher's very laborious, learned and useful treatise, and we still see no reason to retract those commendations or to reduce their measure. His book thoroughly deserves the character it has won of being the only good and complete repertory we have of the law of mortgages, and other securities upon property."—*Law Magazine*.

"The second edition of this book, comprised in two volumes of royal octavo, has little beyond its paternity to identify it with the original volume which appeared in 1856. If we speak of the author's first essay as merely tentative and meagre and partial, it is only to draw particular attention to the very complete arrangement and copious detail of the edition now before the public . . . and we doubt not that the excellence of the

work will receive its due appreciation at the hands of the profession. A word in conclusion is due to the clearness and simplicity which pervades Mr. Fisher's writing. If his language is too often bold and devoid of grace it is never obscure, and we think that the absence of attractive composition will not in these days be accounted a demerit in a treatise designed solely for professional purposes, which possesses the essential qualities of accurate learning and lucid arrangement."—*Law Journal*.

"The labour bestowed upon it by Mr. Fisher will be best understood by this fact. The mere list of cases cited in the text fills forty-three pages in double columns, and the list of statutes and orders cited occupies fifteen pages. We conclude by commending this work equally to the practitioner and the student; it will be invaluable to the former for reference, to the latter for reading and digesting."—*Law Times*.

Coote's Admiralty Practice.—Second Edition.

8vo., 16s. cloth.

THE PRACTICE of the HIGH COURT of ADMIRALTY of ENGLAND: also the Practice of the Judicial Committee of Her Majesty's Most Honorable Privy Council in Admiralty Appeals, with Forms and Bills of Costs. By HENRY CHARLES COOTE, F.S.A., one of the Examiners of the High Court of Admiralty, Author of "The Practice of the Court of Probate," &c. Second Edition, almost entirely re-written, with a Supplement giving the *County Courts Jurisdiction and Practice in Admiralty*, the Act of 1868, Rules, Orders, &c.

THE SUPPLEMENT containing the COUNTY COURT PRACTICE IN ADMIRALTY is complete in itself and may be had separately, 2s. sewed.

. This work contains every Common Form in use by the Practitioner in Admiralty, as well as every description of Bill of Costs in that Court, a feature possessed by no other work on the Practice in Admiralty.

"Mr. Coote, being an Examiner of the Court, may be considered as an authoritative exponent of the points of which he treats. His treatise is, substantially considered, everything that can be desired to the practitioner."—*Law Magazine*.

"The book before us is a second and enlarged edition of a work on the Practice of the Admiralty Court, written by the author some ten years ago. It is, however, a great improvement on its predecessor, being much fuller and more systematically arranged, and containing greater facilities for reference. The first part of the book is a treatise on the practice of the Court, which appears to us to be very carefully done, and to go thoroughly into the subject. The second part is a similar treatise on the practice of the Judicial Committee of the Privy Council in Admiralty matters, written on the same system as the former part. The appendix contains a large number of common forms and precedents of pleadings used in the Court of Admiralty, together with bills of costs. Altogether Mr. Coote has done his work very carefully and completely, and we think his labours will be duly appreciated by Admiralty practitioners."—*Solicitors' Journal*.

"The first edition of this excellent work

was produced for the purpose of illustrating the practice of the High Court of Admiralty. Just then subordinated to the 'Rules of 1859' drawn up by the late distinguished Judge. Since then several important changes have been carried out, both in the matter of an extended jurisdiction and of practice. These changes it has been Mr. Coote's object to incorporate in the present edition of his work. In addition he has increased the utility of his book by a chapter on the practice of the Judicial Committee of the Privy Council in Admiralty Appeals, and by a copious set of Admiralty precedents, in which it is the author's hope and belief that no necessary common form has been omitted. The present edition appears very seasonably."—*Shipping and Mercantile Gazette*.

"Mr. Coote has the great advantage of experience; he has long been a practitioner in the court as a proctor; he is consequently familiar with those minutiae of practice which mark the distinction between the student and the practical man.

"Mr. Coote is a successful writer upon the Practice of the Probate and the Admiralty Courts. His book on the former has reached a fifth edition, and the volume before us is a second edition."—*Law Times*.

Hunt's Boundaries, Fences and Foreshores.—2nd Edit.

Post 8vo., 12s. cloth.

A TREATISE on the LAW relating to BOUNDARIES and FENCES and to the Rights of Property on the Sea Shore and in the Beds of Public Rivers and other Waters. Second Edition. By ARTHUR JOSEPH HUNT, Esq., of the Middle Temple, Barrister at Law.

"It speaks well for this book that it has so soon passed into a second edition. That its utility has been appreciated is shown by its success. Mr. Hunt has availed himself of the opportunity of a second edition to note up all the cases to this time, and to extend considerably some of the chapters, especially that which treats of rights of property on the sea shore and the subjects of sea walls and commissions of sewers."—*Law Times*.

"There are few more fertile sources of litigation than those dealt with in Mr. Hunt's valuable book. It is sufficient here to say that the volume ought to have a larger circulation than ordinarily belongs to law books, that it ought to be found in every country gentleman's library, that the cases are brought down to the latest date, and that it is carefully prepared, clearly

written, and well edited."—*Law Magazine*.

"Mr. Hunt chose a good subject for a separate treatise on Boundaries and Fences and Rights to the Seashore, and we are not surprised to find that a second edition of his book has been called for. The present edition contains much new matter. The chapter especially which treats on rights of property on the seashore, has been greatly extended. Additions have been also made to the chapters relating to the fencing of the property of mine owners and railway companies. All the cases which have been decided since the work first appeared have been introduced in their proper places. Thus it will be seen this new edition has a considerably enhanced value."—*Solicitors' Journal*.

Ortolan's Roman Law, translated by Prichard & Nasmith.

8vo., 28s. cloth.

THE HISTORY of ROMAN LAW, from the Text of Ortolan's *Histoire de la Législation Romaine et Généralisation du Droit* (Edition of 1870). Translated, with the Author's permission, and Supplemented by a Chronometrical Chart of Roman History. By ILLUDUS T. PRICHARD, Esq., F.S.S., and DAVID NASMITH, LL.B., Barristers at Law.

"We know of no work, which, in our opinion, exhibits so perfect a model of what a text book ought to be. Of the translation before us, it is enough to say, that it is a faithful representation of the original."—*Law Magazine*.

"This translation, from its great merit, deserves a warm reception from all who desire to be acquainted with the history and elements of Roman law, or have its interests as a necessary part of sound legal education at heart. With regard to that great work it is enough to say, that English writers have been continually in the habit of doing piecemeal what Messrs. Prichard and Nasmith have done wholesale. Hitherto we have had but gold-dust from the mine; now we are fortunate in obtaining a nugget. Mr. Nasmith is already known as the designer of a chart of the history of England, which has been generally

approved, and bids fairly for extensive adoption."—*Law Journal*.

"We are extremely glad to welcome the appearance of a translation of any of the works of M. Ortolan, and the history and generalization of Roman law, which are now presented to us in English, are perhaps the most useful books that could be offered at the present time to students of the Roman law. The utility of Roman law, as an instrument of legal education, is now generally admitted. The English of the book is unusually free from foreign idioms which so often disfigure translations. The book itself we strongly recommend to all who are interested in Roman law, jurisprudence or history, and who are not sufficiently familiar with French, to be able to read the original with ease."—*Solicitors' Journal*.

Tomkins' Institutes of Roman Law.

Part I. royal 8vo. (to be completed in Three Parts) 12s. cloth.

THE INSTITUTES OF THE ROMAN LAW. PART I. The Sources of the Roman Law and its external History to the decline of the Eastern and Western Empires. By FREDERICK J. TOMKINS, M.A., D.C.L., Barrister-at-Law, of Lincoln's Inn.

"This work promises to be an important and valuable contribution to the study of the Roman Law."—*Law Magazine*.

"Of all the works on the Roman Law we believe this will be the best suited to law students. We welcome the book of Mr. Tomkins. It is calculated to promote the study of Roman Law; and both at the Universities and in the Inns of Court it is a work which may safely and beneficially be employed as a text book."—*Law Times*.

"This work is pronounced by its author to be strictly elementary. But in regard to the labour bestowed, the research exercised, and the materials brought together, it seems to deserve a more ambitious title than that of an elementary treatise. The chapter on legal instruction, de-

tailing the systems of legal education pursued in the various epochs of Rome, reflects great credit on the author, and so far as we know is purely original."—*Law Journal*.

"We know of no other book in which anything like the same amount of information can be acquired with the same ease. If the second part is as well executed as the first and bears a due proportion to it, we think the work bids fair to become the standard text book for English students."—*Solicitors' Journal*.

"The study of this volume is necessary to all who wish to be properly acquainted with the history and literature of the Roman law."—*Irish Law Times*.

"Mr. Tomkins has produced a book that was long needed."—*Law Examination Reporter*.

Saunders' Law of Negligence.

1 vol., post 8vo., 9s. cloth.

A TREATISE on the LAW applicable to NEGLIGENCE.
By THOMAS W. SAUNDERS, Esq., Barrister at Law, Recorder of Bath.

"The book is admirable; while small in bulk, it contains everything that is necessary, and its arrangement is such that one can readily refer to it. Amongst those who have done good service, Mr. Saunders will find a place."—*Law Magazine*.

"In the useful little volume now before us he has gathered the whole law of negligence. All his works are distinguished by painstaking and accuracy. This one is no exception; and the subject, which is of very extensive interest, will insure for it a cordial welcome from the profession."—*Law Times*.

"The references to the cases are given much more fully, and on a more rational system than is common with text book writers. He has a good index; he has produced a work which will facilitate reference to the authorities."—*Solicitors' Journal*.

"As a work of reference the book will be very welcome in the office of the solicitor or in the chambers of the barrister."—*Morning Advertiser*.

"A short and clear treatise like the present on the law relating to the subject ought to be welcomed. It is a moderate size volume, and makes references to all the authorities on the question easy."—*Standard*.

"It is a great advantage to the legal profession to find all the law of negligence collected and arranged in a manual of reasonable size. Such is Mr. Saunders' book."—*Public Opinion*.

"A serviceable and seasonable treatise on the law of negligence, by Thomas W. Saunders, Esq., Recorder of Bath."—*Telegraph*.

"A careful treatise on a branch of law which is daily acquiring importance. The manual before us is a useful treatise."—*Echo*.

Ingram's Law of Compensation.—2nd Edit. by Elmes.

Post 8vo., 12s. cloth.

COMPENSATION to LAND and HOUSE OWNERS: being a Treatise on the Law of the Compensation for Interests in Lands, &c. payable by Railway and other Public Companies; with an Appendix of Forms and Statutes. By THOMAS DUNBAR INGRAM, of Lincoln's Inn, Esq., Barrister at Law. Second Edition. By J. J. ELMES, of the Inner Temple, Esq., Barrister at Law.

"We say at once that it is a work of great merit. It is a concise, clear and complete exposition of the law of compensation applicable to the owners of real property and railway and other companies."—*Law Magazine*.

"Whether for companies taking land or holding it, Mr. Ingram's volume will be a welcome guide. With this in his hand the legal adviser of a company, or of an owner and occupier whose property is taken, and who demands compensation for it, cannot fail to perform his duty rightly."—*Law Times*.

"This work appears to be carefully prepared as regards its matter. This edition is a third larger than the first; it contains twice as many cases, and an enlarged index. It was much called for, and doubtless will be found very useful to the practitioner."—*Law Magazine*, second notice.

"The author's position as Professor of English Law and Jurisprudence is a guarantee of his legal competence, whilst his literary abilities have enabled him to clothe his legal knowledge in language which laymen can understand without being misled by it."—*John Bull*.

Cutler's Law of Naturalization.

12mo., 3s. 6d. cloth.

THE LAW of NATURALIZATION; as Amended by the Acts of 1870. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Editor of "Powell's Law of Evidence," &c.

"The author's position as Professor of English Law and Jurisprudence is a guarantee of his legal competence, whilst his literary abilities have enabled him to clothe his legal knowledge in language which laymen can understand without being misled by it."—*John Bull*.

"Mr. Cutler, in the work before us, lucidly explains the state of the law previous to the recent statute, and shows the alterations produced by it, so that a careful perusal of this book will enable the reader fully to comprehend the present state of the law upon this most important subject."—*Justice of the Peace*.

"This little work will be found of use to our countrymen resident abroad, as well as to

foreigners resident in this country."—*Public Opinion*.

"The book is a model of what a treatise of its kind should be."—*Sunday Times*.

"A very convenient hand-book to the law of naturalization, as amended by the Acts of 1870."—*Weekly Times*.

"To anyone not having much previous acquaintance with the subject, who wishes for a general sketch of the law affecting aliens, as it was, and as it is now, this book will be useful."—*Solicitors' Journal*.

"It has been carefully compiled, and the authorities referred to are accurately cited."—*Pall Mall Gazette*.

Brabrook's Co-operative and Provident Societies.

12mo., 6s. cloth.

THE LAW relating to **INDUSTRIAL** and **PROVIDENT SOCIETIES**, including the Winding-up Clauses, with a Practical Introduction, Notes, and Model Rules, to which are added the Law of France on the same subject, and Remarks on Trades Unions. By **EDWARD W. BRABROOK, F.S.A.**, of Lincoln's Inn, Esq., Barrister at Law, Assistant Registrar of Friendly Societies in England.

"It may be usefully consulted by practitioners desirous of learning something more upon the subject than is to be found in works on partnership and joint stock companies. The book is thoughtfully written, and we recommend it to those who desire to learn something practical about the work which these societies are meant to do and the way in which it is to be done."—*Solicitors' Journal*.

"Mr. Brabrook's little work on these societies is opportune, and the statistics and information contained in it are valuable and interesting. There is a chapter devoted to practical advice,

in which are contained many valuable and important hints."—*Law Magazine*.

"Mr. Brabrook brings not merely official knowledge of his legal position as the barrister recently appointed to assist Mr. Tidd Pratt, Registrar of Friendly Societies in England, but the devotion of many years to a practical study of our industrial and provident institutions."—*Past*.

"The author speaks with practical experience and authority."—*Observer*.

"The clear exposition made by Mr. Brabrook in this volume supplies all the requisite information, and persons interested in the subject will do well to consult its pages."—*News of the World*.

Rouse's Conveyancer.—3rd Ed. with Supplement to 1871.

Two vols. 8vo., 30s. cloth.

The **PRACTICAL CONVEYANCER**, giving, in a mode combining facility of reference with general utility, upwards of Four Hundred Precedents of Conveyances, Mortgages and Leases, Settlements, and Miscellaneous Forms, with (not in previous editions) the Law and numerous Outline Forms and Clauses of **WILLS** and Abstracts of Statutes affecting Real Property, Conveyancing Memoranda, &c. By **ROLLA ROUSE, Esq.**, of the Middle Temple, Barrister at Law, Author of "The Practical Man," &c. Third Edition, greatly enlarged. With a Supplement, giving Abstracts of the Statutory Provisions affecting the Practice in Conveyancing, to the end of 1870; and the requisite Alterations in Forms, with some new Forms; and including a full Abstract in numbered Clauses of the Stamp Act, 1870.

THE SUPPLEMENT separately, price 1s. 6d. sewed.

"The best test of the value of a book written professedly for practical men is the practical one of the number of editions through which it passes. The fact that this well-known work has now reached its third shows that it is considered by those for whose convenience it was written to fulfil its purpose well."—*Law Magazine*.

"This is the third edition in ten years, a proof that practitioners have used and approved the precedents collected by Mr. Rouse. In this edition, which is greatly enlarged, he has for the first time introduced Precedents of Wills, extending to no less than 116 pages. We can accord unmingled praise to the conveyancing memoranda showing the practical effect of the various statutory provisions in the different parts of a deed. If the two preceding editions have been so well received, the welcome given to this one by the profession will be heartier still."—*Law Times*.

"So far as a careful perusal of Mr. Rouse's book enables us to judge of its merits, we think that as a collection of precedents of general utility in cases of common occurrence it will be found satisfactorily to stand the application of the test. The draftsman will find in the Practical Conveyancer precedents appropriate to all instruments of common occurrence, and the collection appears to be especially well supplied with those which relate to copyhold estates. In order to avoid useless repetition and also to make the precedents as simple as possible, Mr. Rouse has sketched out a number of outline drafts so as to present to the

reader a sort of bird's-eye view of each instrument and show him its form at a glance. Each paragraph in these outline forms refers, by distinguishing letters and numbers, to the clauses in full required to be inserted in the respective parts of the instrument, and which are given in a subsequent part of the work, and thus every precedent in outline is made of itself an index to the clauses which are necessary to complete the draft. In order still further to simplify the arrangement of the work, the author has adopted a plan (which seems to us fully to answer its purpose) of giving the variations which may occur in any instrument according to the natural order of its different parts."—*Law Journal*.

"That the work has found favor is proved by the fact of our now having to review a third edition. This method of skeleton precedents appears to us to be attended with important advantages. To clerks and other young hands a course of conveyancing under Mr. Rouse's auspices is, we think, calculated to prove very instructive. To the solicitor, especially the country practitioner, who has often to set his clerks to work upon drafts of no particular difficulty to the experienced practitioner, but upon which they the said clerks are not to be quite trusted alone, we think to such gentlemen Mr. Rouse's collection of Precedents is calculated to prove extremely serviceable. We repeat, in conclusion, that solicitors, especially those practising in the country, will find this a useful work."—*Solicitors' Journal*.

Dixon's Law of Partnership.

1 vol. 8vo., 22s. cloth.

A TREATISE on the LAW of PARTNERSHIP. By JOSEPH DIXON, of Lincoln's Inn, Esq., Barrister at Law. Editor of "Lush's Common Law Practice."

"It is with considerable gratification that we find the subject treated by a writer of Mr. Dixon's reputation for learning, accuracy and painstaking. Mr. Lindley's view of the subject is that of a philosophical lawyer, Mr. Dixon's is purely and exclusively practical from beginning to end. We imagine that very few questions are likely to come before the practitioner which Mr. Dixon's book will not be found to solve. Having already passed our opinion on the way in which the work is carried out, we have only to add that the value of the book is very materially increased by an excellent marginal summary, and a very copious index."—*Law Magazine and Review*.

"Mr. Dixon has done his work well. The book is carefully and usefully prepared."—*Solicitors' Journal*.

"Mr. Dixon enters into all the conditions of partnerships at common law, and defines the rights of partners among themselves; the rights of the partnership against third persons; the rights of third persons against the partnership; and the rights and liabilities of individuals, not actually partners, but liable

to be treated by third persons as partners."—*The Times*.

"We heartily recommend to practitioners and students Mr. Dixon's treatise as the best exposition of the law we have read, for the arrangement is not only artistic, but conciseness has been studied without sacrifice of clearness. He sets forth the principles upon which the law is based as well as the cases by which its application is shown. Hence it is something more than a digest, which too many law books are not: it is really an essay."—*Law Times*.

"He has evidently bestowed upon this book the same conscientious labour and painstaking industry for which we had to compliment him some months since when reviewing his edition of Lush's 'Practice of the Superior Courts of Law,' and, as a result, he has produced a clearly written and well arranged manual upon one of the most important branches of our mercantile law."—*Law Journal*.

"The matter is well arranged and the work is carefully executed."—*Athenaeum*.

Mr. Justice Lush's Common Law Practice.—Third Edition by Dixon.

2 vols. 8vo., 46s. cloth.

LUSH'S PRACTICE of the SUPERIOR COURTS of COMMON LAW at WESTMINSTER, in Actions and Proceedings over which they have a common Jurisdiction: with Introductory Treatises respecting Parties to Actions; Attornies and Town Agents, their Qualifications, Rights, Duties, Privileges and Disabilities; the Mode of Suing, whether in Person or by Attorney in Formâ Pauperis, &c. &c. &c.; and an Appendix, containing the authorized Tables of Costs and Fees, Forms of Proceedings and Writs of Execution. Third Edition. By JOSEPH DIXON, of Lincoln's Inn, Esq., Barrister at Law.

"This is an excellent edition of an excellent work. He has effected a most successful 'restoration.' Altogether, both in what he has omitted and what he has added, Mr. Dixon has been guided by sound discretion. We trust that the great and conscientious labours he has undergone will be rewarded. He has striven to make his work 'thorough,' and because he has done so we take pleasure in heartily recommending it to every member of both branches of the profession."—*Solicitors' Journal*.

"Lush's Practice is what Tidd's Practice was in our days of clerkship, and what Archbold's Practice was in our early professional days—the practice in general use, and the received authority on the subject. It was written by Mr. Lush when he was only a junior rising into fortune and fame. His practical knowledge, his clearness and industry, were even then acknowledged, and his name secured for his work an immediate popularity, which experience has confirmed and extended. But the work was, in its turn, productive of con-

siderable advantage to the author, it largely increased the number of his clients. When new editions were called for, Mr. Lush was too occupied with briefs to find time for the preparation of books, and hence the association of his name with that of Mr. Dixon as editor, and by whom the new edition has been produced. The index is very copious and complete. Under Mr. Dixon's care Lush's Practice will not merely maintain, it will largely extend its reputation."—*Law Times*.

"The profession cannot but welcome with the greatest cordiality and pleasure a third edition of their old and much valued friend 'Lush's Practice of the Superior Courts of Law.' Mr. Dixon, in preparing this edition, has gone back to the original work of Mr. Justice Lush, and, as far as the legislative changes and decisions of the last twenty-five years would allow, reproduced it. This adds greatly to the value of this edition, and at the same time speaks volumes for Mr. Dixon's conscientious labour."—*Law Journal*.

Brown on the Law of Fixtures.

8vo., 3s. 6d. cloth.

THE RULE of the LAW of FIXTURES. By ARCHIBALD BROWN, Esq., of the Middle Temple, Barrister-at-Law.

"We had occasion to notice this treatise whilst it was appearing in the *Law Magazine*, and the favourable opinion we then formed is confirmed by a perusal of the book, which is furnished with a table of cases bearing on the

subject, and which are discussed or referred to by the author."—*Law Journal*.

"Simple and clear in language and in style, it is none the less logical and supremely technical. We very heartily and honestly commend this volume."—*Mechanics Magazine*.

Clifford and Stephens's Practice of Referees Court, 1871.

Vol. I. and Vol. II. Part I., royal 8vo., 38s. cloth.

THE PRACTICE of the COURT of REFEREES on PRIVATE BILLS in PARLIAMENT, with Reports of Cases as to the locus standi of Petitioners during the Sessions 1867-8-9 and 70. By FREDERICK CLIFFORD and PEMBROKE S. STEPHENS, Barristers-at-Law.

"The authors point out in their preface that none of the decisions of 1867 or later years are included in the previous works on the subject. They are accordingly reported in the work before us, arranged in six groups. The history and practice of the subject are detailed tersely and accurately, and in a very intelligible manner, in the treatise. To counsel or agents engaged in parliamentary practice the

work will prove extremely serviceable."—*Solicitors' Journal*.

"The reports, forming the most important part of the volume, are given with fulness and accuracy, so far as we can judge, and are of themselves a sufficient recommendation to the volume."—*Law Journal*.

"Clifford and Stephens, the authority now universally quoted and relied on in this (Referees) Court."—*Daily News*.

VOL. II. PART I., containing the Cases decided during the Session 1870, may be had separately, 10s. sewed.

Starkie's Law of Slander and Libel.—3rd Edition.

One thick vol. medium 8vo., 42s. cloth.

STARKIE'S TREATISE on the LAW of SLANDER and LIBEL; including MALICIOUS PROSECUTIONS, CONTEMPTS of COURT, &c.; also the Pleading and Evidence, Civil and Criminal, with Forms and Precedents. Third Edition. By H. C. FOLKARD, Barrister-at-Law.

"No one will fail to see that there were ample reasons for a new edition of this valuable work; and upon reference to this edition it will be found that Mr. Folkard has performed his task carefully and well. It is well that such a treatise should have been re-edited, and it is well that it should have been edited by so careful and painstaking a man as Mr. Folkard."—*Law Magazine*.

"Thirty-nine years have gone by and now Mr. Folkard has brought out a third edition and certainly the first glance of the new book gives the impression of pains unspared. In point of bulk it contains more than twice as much matter as the edition of 1830. With the present volume before them, the law officers of the crown, and lawyers generally, will be saved an infinite amount of labour in search of precedents. No one can say that Mr. Folkard has failed in the full discharge of his onerous duty, and we are sure that he will earn, as he will obtain, the gratitude of the profession."—*Law Journal*.

"It has been most laboriously executed, and,

as far as we have been able to examine, the modern cases, down to the very latest, and to the most obscure, have all been collected, and have, on the whole, been accurately set out. The profession may we think be pretty confident that whatever has been decided upon the law of libel will be found there."—*Solicitors' Journal*.

"It was requisite that the profession should be supplied with a new edition of this standard work upon the subject, which should bring down the law to the most recent period. It would be difficult to find any part of his subject which Mr. Folkard has not fully investigated, and the result is a valuable addition to the lawyer's library which for many years has been much needed."—*Justice of the Peace*.

"This edition is of much greater value than either of the two which preceded it. In conclusion we may do that which is now scarcely necessary, recommend Mr. Folkard's work to the profession and the public. It is, as now edited, very valuable."—*Law Times*.

Seaborne's Law of Vendors and Purchasers.

Post 8vo., 9s. cloth.

A CONCISE MANUAL of the LAW of VENDORS and PURCHASERS of REAL PROPERTY. By HENRY SEABORNE.

* * * This work is designed to furnish Practitioners with an easy means of reference to the Statutory Enactments and Judicial Decisions regulating the transfer of Real Property, and also to bring these authorities in a compendious shape under the attention of Students.

"The student will find this book a useful introduction to a dry and difficult subject."—*Law Examination Journal*.

"Intended to furnish a ready means of access to the enactments and decisions governing that branch of the law."—*The Times*.

"The book before us contains a good deal, especially of practical information as to the course of conveyancing matters in solicitors' offices,

which may be useful to students."—*Solicitors' Journal*.

"We will do Mr. Seaborne the justice to say that we believe his work will be of some use to articulated clerks and others in solicitors' offices, who have not the opportunity or inclination to refer to the standard works from which his is compiled."—*Law Journal*.

Clark's Digest of House of Lords Cases.

Royal 8vo., 31s. 6d. cloth.

A DIGESTED INDEX to all the REPORTS in the HOUSE of LORDS from the commencement of the Series by Dow, in 1814, to the end of the Eleven Volumes of House of Lords Cases, with references to more recent Decisions. By CHARLES CLARK, of the Middle Temple, Esq., Barrister at Law, Reporter by Appointment to the House of Lords.

Barry's Practice of Conveyancing.

8vo., 18s. cloth.

A TREATISE on the PRACTICE of CONVEYANCING. By W. WHITTAKER BARRY, Esq., of Lincoln's Inn, Barrister at Law, late Holder of the Studentship of the Inns of Court, and Author of "A Treatise on the Statutory Jurisdiction of the Court of Chancery."

CHAP. 1. Abstracts of Title.—CHAP. 2. Agreements.—CHAP. 3. Particulars and Conditions of Sale.—CHAP. 4. Copyholds.—CHAP. 5. Covenants.—CHAP. 6. Creditors' Deeds and Arrangements.—CHAP. 7. Preparation of Deeds.—CHAP. 8. On Evidence.—CHAP. 9. Leases.—CHAP. 10. Mortgages.—CHAP. 11. Partnership Deeds and Arrangements.—CHAP. 12. Sales and Purchases.—CHAP. 13. Settlements.—CHAP. 14. Wills.—CHAP. 15. The Land Registry Act, 25 & 26 Vict. c. 53.—CHAP. 16. The Act for obtaining a Declaration of Title, 25 & 26 Vict. c. 67.—INDEX.

"The author of this valuable treatise on conveyancing has most wisely devoted a considerable part of his work to the practical illustration of the working of the recent Statutes on Registration of Title—and for this, as well as for other reasons, we feel bound to strongly recommend it to the practitioner as well as the student. The author has proved himself to be a master of the subject, for he not only gives a most valuable supply of practical suggestions, but criticises them with much ability, and we have no doubt that his criticism will meet with general approval."—*Law Magazine*.

"The author introduces a work which will be found a very acceptable addition to the law library, and to supply a want which we think has hitherto been felt. It contains, in a concise and readable form, the law relating to almost every point likely to arise in the ordinary every day practice of the conveyancer, with references to the various authorities and statutes to the latest date, and may be described as a manual of practical conveyancing."—*Law Journal*.

"This treatise supplies a want which has long been felt. There has been no treatise on the Practice of Conveyancing issued for a long time past that is adequate for the present requirements. Mr. Barry's work is essentially what it professes to be, a treatise on the Practice of Conveyancing,

in which the theoretical rules of real property law are referred to only for the purpose of elucidating the practice. Mr. Barry appears to have a very accurate insight into the practice in every department of our real property system. Although we cannot boast, like Duval, of having ever read abstracts of title with pleasure, we have certainly read Mr. Barry's chapter on abstracts and numerous other parts of his work with very considerable satisfaction on account of the learning, great familiarity with practice, and power of exposition of its author. The treatise, although capable of compression, is the production of a person of great merit and still greater promise."—*Solicitors' Journal*.

"The Author's design was to do for the practice of conveyancing what Mr. Joshua Williams has done for its principles, to describe it simply, clearly and succinctly, recollecting that he was only laying the foundation and not crowning the edifice. A work the substance of which is so well known to our readers, needs no recommendation from us, for its merits are patent to all, from personal acquaintance with them. The information that the treatise so much admired may now be had in the more convenient form of a book, will suffice of itself to secure a large and eager demand for it."—*Law Times*.

Hunter's Suit in Equity.—Fifth Edition.

Post 8vo., 10s. 6d. cloth.

AN ELEMENTARY VIEW of the PROCEEDINGS in a SUIT in EQUITY. With an Appendix of Forms. By SYLVESTER J. HUNTER, B.A., of Lincoln's Inn, Barrister at Law. Fifth Edition. By G. W. LAWRENCE, M.A., of Lincoln's Inn, Barrister at Law.

"'Hunter's Suit in Equity' is an excellent book for students. It is really an indispensable for the chancery part of the lawyer's education. It is a great excellence of this work, that while making everything clear and giving substantially sufficient information, its writers have been able to strike the happy mean between too great compression and embarrassing exuberance of detail."—*Solicitors' Journal*.

"We presume that the continued demand for a volume of so essential utility to students of equity, rather than the necessary incorporation of any new matter, has occasioned the publication of a new edition. The alterations and additions to chancery practice and procedure which have been made during the last three years by statute and by general orders of the court are embodied in their proper places in the present edition. In other respects we need pass no encomiums on the work before

us, for its standard merit is too well known to require commendation."—*Law Journal*.

"Changes have compelled the recasting of a considerable portion of Mr. Hunter's excellent outline of the proceedings in a suit in equity, which has become a text-book with the law student. This work has been well done by Mr. Lawrence, who has strictly preserved the scheme of the original sketch, while adapting it to the various changes that have been made. All former editions must be at once exchanged for this one."—*Law Times*.

"As an excellent introduction to the study of chancery practice the book has established its position, and we think the editor has done wisely in merely introducing such amendments as the alteration in the law by statutes and orders requires, and abstaining from any attempt to make it a manual of practice."—*Law Magazine*.

Lewis's Introduction to Equity Drafting.

Post 8vo., 12s. cloth.

PRINCIPLES of EQUITY DRAFTING; with an Appendix of Forms. By HUBERT LEWIS, B.A., of the Middle Temple, Barrister at Law; Author of "Principles of Conveyancing," &c.

"* This Work, intended to explain the general principles of Equity Drafting, as well as to exemplify the Pleadings of the Court of Chancery, will, it is hoped, be useful to lawyers resorting to the *New Equity Jurisdiction of the County Courts*.

"We have little doubt that this work will soon gain a favorable place in the estimation of the profession. It is written in a clear attractive style, and is plainly the result of much thoughtful and conscientious labour."—*Law Magazine and Review*.

"Mr. Lewis's work is likely to have a much wider circle of readers than he could have anticipated when he commenced it, for almost every page will be applicable to County Court Practice, should the bill, in any shape or under

any title, be retained in the new jurisdiction,—without it we fear that equity in the County Courts will be a mass of uncertainty,—with it every practitioner must learn the art of equity drafting, and he will find no better teacher than Mr. Lewis."—*Law Times*.

"This will, we think, be found a very useful work, not only to students for the bar and solicitors practising in the County Courts, as anticipated by the author, but also to the equity draftsman."—*Law Journal*.

Lewis's Introduction to Conveyancing.

8vo., 18s. cloth.

PRINCIPLES of CONVEYANCING explained and illustrated by Concise Precedents; with an Appendix on the effect of the Transfer of Land Act in modifying and shortening Conveyances. By HUBERT LEWIS, B.A., late Scholar of Emmanuel College, Cambridge, of the Middle Temple, Barrister at Law.

"The preface arrested our attention, and the examination we have made of the whole treatise has given us (what may be called a new sensation) pleasure in the perusal of a work on Conveyancing. We have, indeed, read it with pleasure and profit, and we may say at once that Mr. Lewis is entitled to the credit of having produced a very useful, and, at the same time, original work. This will appear from a mere outline of his plan, which is very ably worked out. The manner in which his dissertations elucidate his subject is clear and practical, and his expositions, with the help of his precedents, have the best of all qualities in such a treatise, being eminently judicious and substantial. Mr. Lewis's work is conceived in the right spirit. Although a learned and goodly volume, it may yet, with perfect propriety, be called a 'handy book.' It is besides a courageous attempt at legal improvement; and it is, perhaps, by works of such a character that law reform may be best accomplished."—*Law Magazine and Review*.

"It was still felt that a work explanatory and illustrative of conveyancing precedents remained

a desideratum. Mr. Lewis proposes to supply this want in the work now before us. The book will be of the greatest use to those who have some antecedent knowledge of real property law, but who have not had much experience in the preparation of conveyances. 'How to do it' might well be the motto of the author, and certainly no ordinary lawyer can peruse Mr. Hubert Lewis's book without making himself much more competent to prepare and understand conveyancing than he was before. On the whole we consider that the work is deserving of high praise, both for design and execution. It is wholly free from the vice of book making, and indicates considerable reflection and learning. Mr. Lewis has, at all events, succeeded in producing a work to meet an acknowledged want, and we have no doubt he will find many grateful readers amongst more advanced, not less than among younger, students. In an appendix, devoted to the Land Transfer Act of last session there are some useful and novel criticisms on its provisions."—*Solicitors' Journal*.

Kerr's Action at Law.—Third Edition.

12mo., 9s. cloth.

AN ACTION AT LAW: being an Outline of the Jurisdiction of the Superior Courts of Common Law, with an Elementary View of the Proceedings in Actions therein. By **ROBERT MALCOLM KERR**, Barrister at Law; now Judge of the Sheriff's Court of the City of London. Third Edition.

"There is considerable merit in both works (John William Smith's and Malcolm Kerr's); but the second (Kerr) has rather the advantage."—*Jurist*.

"Mr. Kerr's book is more full and detailed than

that of Mr. John William Smith, and is therefore better adapted for those who desire to obtain not merely a general notion but also a practical acquaintance with Common Law Procedure"—*Solicitors' Journal*.

Tudor's Leading Cases on Real Property, &c.—2nd Edit.

One thick vol. royal 8vo., 42s. cloth.

A SELECTION OF LEADING CASES on the **LAW RELATING TO REAL PROPERTY**, Conveyancing, and the Construction of Wills and Deeds; with Notes. By **OWEN DAVIES TUDOR**, Esq., of the Middle Temple, Barrister at Law. Author of "A Selection of Leading Cases in Equity." Second Edition.

"The Second Edition is now before us, and we are able to say that the same extensive knowledge and the same laborious industry as have been exhibited by Mr. Tudor on former occasions characterize this later production of his legal authorship; and it is enough at this moment to reiterate an opinion that Mr. Tudor has well maintained the high legal reputation which his standard works have achieved in all countries where the English language is spoken, and the decisions of our Courts are quoted."

—*Law Magazine and Review*.

"The work before us comprises a digest of decisions which, if not exhaustive of all the principles of our real property code, will at least be found to leave nothing untouched or unelaborated under the numerous legal doctrines to which the cases severally relate. To Mr. Tudor's treatment of all these subjects, so complicated and so varied, we accord our entire commendation. There are no omissions of any important cases relative to the various branches of the law comprised in the work, nor are there any omissions or defects in his statement of the

law itself applicable to the cases discussed by him. We cordially recommend the work to the practitioner and the student alike, but especially to the former."—*Solicitors' Journal*.

"This and the other volumes of Mr. Tudor are almost a law library in themselves, and we are satisfied that the student would learn more law from the careful reading of them than he would acquire from double the time given to the elaborate treatises which learned professors recommend the student to peruse, with entire forgetfulness that time and brains are limited, and that to do what they advise would be the work of a life. Smith and Mr. Tudor will together give them such a knowledge of law as they could not obtain from a whole library of text books, and of law that will be useful every day, instead of law that they will not want three times in their lives. At this well the practising lawyer might beneficially refresh his memory by a draught, when a leisure hour will permit him to study a leading case. No law library should be without this most useful book."—*Law Times*.

Benham's Student's Examination Guide.

12mo. 3s. cloth.

THE STUDENT'S GUIDE to the **PRELIMINARY EXAMINATION FOR ATTORNEYS AND SOLICITORS**, and also to the Oxford and Cambridge Local Examinations and the College of Preceptors; to which are added numerous Suggestions and Examination Questions, selected from those asked at the Law Institution. By **JAMES ERLE BENHAM**, of King's College, London.

"The book is artistically arranged. It will become a useful guide and instructor not only to law students but to every student who is preparing for a preliminary examination."—*Law Journal*.

"The book is written in a clear and agreeable style, and will no doubt be found useful by the class of readers for whom it is intended."—*Law Magazine and Review*.

"Mr. Benham has produced a very useful manual. He gives many suggestions on all the subjects of examination and full information thereon."—*Law Examination Reporter*.

"He has succeeded in producing a book which will doubtless prove useful. The sets of examination papers appear to be judiciously selected and are tolerably full."—*Irish Law Times*.

Tomkins and Jencken's Modern Roman Law.

8vo., 14s. cloth.

COMPENDIUM of the MODERN ROMAN LAW. Founded upon the Treatises of Puchta, Von Vangerow, Arndts, Franz Møhler and the Corpus Juris Civilis. By **FREDERICK J. TOMKINS, Esq., M.A., D.C.L.,** Author of the "Institutes of Roman Law," Translator of "Gaius," &c.; and **HENRY DIEDRICH JENCKEN, Esq.,** Barristers at Law, of Lincoln's Inn.

"Mr. Tomkins and Mr. Jencken could not have written such an excellent book as this if they had not devoted many laborious days, probably years, to the study of Roman Law in its entirety, and to research into the laws of continental states, for the purpose of learning what principles of Roman Law are preserved in their jurisprudence."—*Law Times*.

"To those who think with us that the study of the modern civil law has been too much neglected in the education of solicitors, the admirable book whose title we have above announced will be indeed invaluable."—*Law Examination Journal*.

"They have unquestionably given us a most valuable contribution on the literature of Roman Law, and one which ought to rapidly work its way to public favor."—*North British Mail*.

"We cordially wish success to a book which

from the care bestowed upon it by two experienced authors can scarcely fail, we should hope, to take a respectable place among the educational works on Roman Law, which seem likely to form a special feature among the legal publications of the present epoch."—*Athenæum*.

"A valuable contribution to a kind of literature which English jurists are only now beginning to value at its true worth. Dr. Tomkins and his fellow-worker, Mr. H. D. Jencken, have bestowed much labour on their task."—*Echo*.

"Their work is well arranged and clearly written, and presents in an agreeable and readable form the principles of the great system of Roman Civil Law. It is admirably adapted for the use of students, while the copious references which it contains to the writings of the great civilians upon whose works it is based render it a valuable text-book for the more advanced practitioner."—*Irish Law Times*.

Latham's Law of Window Lights.

Post 8vo., 10s. cloth.

A TREATISE on the LAW of WINDOW LIGHTS. By **FRANCIS LAW LATHAM, of the Inner Temple, Esq.,** Barrister at Law.

"This is not merely a valuable addition to the law library of the practitioner, it is a book that every law student will read with profit. It exhausts the subject of which it treats."—*Law Times*.

"His arrangement is logical, and he discusses fully each point of his subject. The work, in our opinion, is both perspicuous and able, and we cannot but compliment the author on it."—*Law Journal*.

"A treatise on this subject was wanted, and Mr. Latham has succeeded in meeting that want."—*Athenæum*.

"Mr. Latham is evidently one of those authors who like to have a complete skeleton of their subject elaborated before putting pen to paper; and the consequence is, that this little work is one which we have much pleasure in recommending to the profession. The sequence of discussion is well ordered, and the author's plan well adhered to; and although the text comprises less than 250 octavo pages,

the subject is quite exhaustively treated. To solicitors the volume will, we think, be particularly serviceable. Armed with the work we have now reviewed, the practitioner will be in a fair way to cope successfully with the most *exigent* client who comes to consult him about his windows."—*Solicitors' Journal*.

"This subject has acquired a general commercial interest, and a clear concise work upon it is, at this time, very opportune. Mr. Latham's treatise on the Law of Window Lights appears to supply in a convenient form all the information which, in a general way, may be required. The text throughout is lucid and is well supported by precedents."—*Building News*.

"Mr. Latham has done well in providing a new treatise on the subject, and setting forth some of the more recent decisions of our courts. It is well arranged and clearly written. We recommend the book."—*Builder*.

Tudor's Law of Charitable Trusts.—Second Edition.

Post 8vo., 18s. cloth.

THE LAW OF CHARITABLE TRUSTS; with the Statutes to the end of Session 1870, the Orders, Regulations and Instructions, issued pursuant thereto; and a Selection of Schemes. By **OWEN DAVIES TUDOR, Esq.,** of the Middle Temple, Barrister-at-Law; Author of "Leading Cases in Equity;" "Real Property and Conveyancing;" &c. Second Edition.

"No living writer is more capable than Mr. Tudor of producing such a work: his Leading Cases in Equity, and also on the Law of Real Property, have deservedly earned for him the highest reputation as a learned, careful and judicious text-writer. We have only to add that the index is very carefully

compiled."—*Solicitors' Journal*.

"Mr. Tudor's excellent little book on Charitable Trusts. It is in all respects the text-book for the lawyer, as well as a hand-book for reference by trustees and others engaged in the management of charities."—*Law Times*.

Gaius's Roman Law, by Tomkins and Lemon.

Complete in 1 vol. 8vo., 27s. cloth extra.

(Dedicated by permission to Lord Chancellor Hatherley.)

THE COMMENTARIES OF GAIUS ON THE ROMAN LAW: with an English Translation and Annotations. By **FREDERICK J. TOMKINS, Esq., M.A., D.C.L.,** and **WILLIAM GEORGE LEMON, Esq., LL.B.** Barristers at Law, of Lincoln's Inn.

"We congratulate the authors on the production of a work creditable alike in its inception and its progress. The translation is on the whole satisfactory: the annotations are often valuable and compiled from trustworthy sources."—*Law Journal*.

"They have done a good service to the study of Roman Law, and deserve the thanks of those who take an interest in legal literature."—*Solicitors' Journal*.

"After a careful perusal of the present work, we feel bound to speak in the highest terms of the manner in which Mr. Tomkins and Mr. Lemon have executed their task. We have no hesitation in pronouncing the work to be a most valuable contribution to juristical learning, and we unhesitatingly recommend its careful perusal to all students of Roman Law."—*Law Magazine*.

"The translation is carefully executed, and the annotations show extensive knowledge of the Roman Law."—*Athenæum*.

"The book is in every respect one of the most valuable contributions, from an English source, to our legal literature which the last half century has witnessed."—*Edinburgh Evening Courant*.

"The want of an edition of the Commentaries of Gaius for English students has now been supplied by Dr. Tomkins and Mr. Lemon in a manner which leaves nothing to be desired. The translation of the Latin text is excellent; and the notes, upon which the value of the work mainly depends, are full of the most ample learning upon the matter of the text."—*Irish Law Times*.

"This is the first time that the text of Gaius has been translated into English, and it is remarkably well done by Messrs. Tomkins and Lemon in the part before us, who have also enriched the text by many valuable notes."—*Law Examination Reporter*.

Phillimore's Commentaries on International Law.

4 vols. 8vo., 5l. 15s. cloth.

COMMENTARIES ON INTERNATIONAL LAW. By the **Right Hon. SIR ROBERT PHILLIMORE, Knt.,** now Judge of the High Court of Admiralty of England.

. Vol. 1, second edition, price 25s., Vol. 2, second edition, price 28s., Vol. 3, price 32s., Vol. 4, price 30s., may be had separately to complete sets, or the work may be had complete in four Vols., price 5l. 15s. cloth.

Extract from Pamphlet on "American Neutrality," by GEORGE BEMIS (Boston, U.S.).—"Sir Robert Phillimore, the present Queen's Advocate, and author of the most comprehensive and systematic 'Commentary on International Law' that England has produced."

"The authority of this work is admittedly great, and the learning and ability displayed in its preparation have been recognized by writers on public law both on the Continent of Europe and in the United States. With this necessarily imperfect sketch we must conclude our notice of the first volume of a work which forms an important contribution to the literature of public law. The book is of great utility, and one which should find a place in the library of every civilian."—*Law Magazine*.

"We cordially welcome a new edition of vol. 1. It is a work that ought to be studied by every educated man, and which is of constant use to the public writer and statesman. We wish, indeed, that our public writers would read it more abundantly than they have done, as they would then avoid serious errors in discussing foreign questions. Any general criticism of a book which has been received as a standard work would be superfluous; but we may remark, that whilst Sir Robert strictly ad-

heres to the canons of legal authorship, and never gives a statement without an authority or offers a conclusion which is not manifestly deducible from established facts or authoritative utterances, yet so lucid is his style, we had almost said so popular, so clear is the enunciation of principles, so graphic the historical portions, that the book may be read with pleasure as well as profit. It will not be out of place to further remark, that the arrangement is excellent, the table of contents, the list of authorities are complete, and, therefore, these Commentaries are singularly handy for reference. Altogether this work is a witness to the zeal, industry and ability of Sir R. Phillimore. It will not only be read at home, but also in the United States, and it cannot fail to smooth the way for the thorough international understanding between England and America that the true men of both countries so ardently desire."—*Law Journal*.

Christie's Crabb's Conveyancing.—Fifth Edit. by Shelford.

Two vols. royal 8vo., 3l. cloth.

CRABB'S COMPLETE SERIES of PRECEDENTS in CONVEYANCING and of COMMON and COMMERCIAL FORMS in Alphabetical Order, adapted to the Present State of the Law and the Practice of Conveyancing; with copious Prefaces, Observations and Notes on the several Deeds. By J. T. CHRISTIE, Esq., Barrister-at-Law. The Fifth Edition, with numerous Corrections and Additions, by LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law.

*• This Work, which embraces both the Principles and Practice of Conveyancing, contains likewise every description of Instrument wanted for Commercial Purposes.

General Table of Heads of Prefaces and Forms.

Abstracts.—Accounts.—Acknowledgments.—Acquittances.—Admittances.—Affidavits, Affirmations or Declarations.—Agreements: to relinquish Business: to Guarantee: for a Lease: before Marriage: for a Partition: between Principal and Agent: for the Sale and Purchase of Estates: for Sale of Copyhold Estates: for Sale of Leaseholds: for Sale of an Advowson.—Annuity: secured on Copyholds.—Annuities: Assignments of.—Appointments: of Guardians.—Apportionment.—Apprenticeship: to the Sea Service: to an Attorney: Assignment of.—Arbitration: Award.—Assignments: Bonds: Leases: Patents: Pews: Policies of Insurance: Reversionary Interests.—Attestations.—Attornments.—Auctions: Particulars of Sale.—Bargains and Sales: of Timber.—Bills of Sale of Goods.—Bonds: Administration: Receiver pending Suit: Post Obitt: Stamps on.—Certificates.—Composition: Conveyances in Trust for Creditors.—Conditions of Sale.—Confirmations.—Consents.—Copartnership: Dissolution of Copartnership.—Covenants: Stamps on: for Production of Title Deeds.—Declarations.—Deeds: I. Nature of Deeds in General: II. Requisites of a Deed: III. Formal parts of Deeds: IV. Where a Deed is necessary or otherwise: V. Construction of Deeds: VI. Avoiding of Deeds: VII. Proof of Deeds: VIII. Admission of Parol Evidence as to Deeds: IX. Possession of Deeds: X. Stamp Duty on Deeds.—Defeasances.—Demises.—Deputation.—Disclaimers.—Disentailing Deeds.—Distress: Notices of.—Dower.—Enfranchisements.—Exchanges.—Reoffments.—Further Charges.—Gifts.—Grants.—Grants of Way or Road.—Indemnities.—Leases: I. Nature of Leases in General: II. Requisites to a Lease: III. Parts of a Lease: IV. Incidents to a Lease: V. Stamps on Leases.—Letters of Credit.—Licences.—Mortgages: of Copyholds: of Leaseholds: Transfer of: Stamp Duty on.—Notes, Orders, Warrants, &c.—Notices: to Quit.—Partition.—Powers: of Attorney.—Presentation.—Purchase Deeds: Conveyance of Copyholds: Assignments of Leaseholds: Stamps on.—Recitals.—Releases or Conveyances: or Discharges.—Renunciations or Disclaimers.—Resignations.—Revocations.—Separation.—Settlements: Stamp Duty on.—Shipping: Bills of Lading: Bills of Sale: Bottomry and Respondentia Bonds: Charter Parties.—Surrenders.—Wills: 1. Definition of Will and Codicil: 2. To what Wills the Act 7 Will. 4 & 1 Vict. c. 26 does not apply: 3. What may be disposed of by Will: 4. Of the capacity of Persons to make Wills: 5. Who may or may not be devisees: 6. Execution of Wills: 7. Publication of Wills: 8. Revocation of Wills: 9. Lapse of Devises and Bequests: 10. Provisions and Clauses in Wills: 11. Construction of Wills.

From the Law Times.

"The preparation of it could not have been confined to more able hands than those of Mr. Shelford, the veteran authority on real property law. With the industry that distinguishes him he has done ample justice to his task. In carefulness we have in him a second Crabb, in erudition Crabb's superior; and the result is a work of which the original author would have been proud, could it have appeared under his own auspices. It is not a book to be quoted, nor indeed could its merits be exhibited by quotation. It is essentially a book of practice, which can only be described in rude outline and dismissed with applause, and a recommendation of it to the notice of those for whose service it has been so laboriously compiled."

From the Solicitors' Journal.

"The collection of precedents contained in these two volumes are all that could be desired. They are particularly well adapted for Solicitors, being of a really practical character. They are moreover free from the useless repetitions of common forms that so much increase the bulk and expense of some collections that we could name. We know not of any collection of conveyancing precedents that would make it so possible for a tyro to put together a presentable draft at an emergency, or which are more handy in every respect, even for

the experienced draftsman. Mr. Shelford has proved himself in this task to be not unworthy of his former reputation. To those familiar with his other works it will be a sufficient recommendation of this."

From the Law Magazine and Review.

"'To this important part of his duty—the remodelling and perfecting of the Forms—even with the examination which we have already been able to afford this work, we are able to affirm, that the learned editor has been eminently successful and effected valuable improvements."

From the Law Chronicle.

"It possesses one distinctive feature in devoting more attention than usual in such works to forms of a commercial nature. We are satisfied from an examination of the present with the immediately preceding edition that Mr. Shelford has very considerably improved the character of the work, both in the prefaces and in the forms. On the whole the two volumes of Crabb's Precedents, as edited by Mr. Leonard Shelford, will be found extremely useful in a solicitor's office, presenting a large amount of real property learning, with very numerous precedents: indeed we know of no book so justly entitled to the appellation of 'handy' as the fifth edition of Mr. Crabb's Precedents."

Mosely's Articled Clerks' Handy-Book.

12mo., 7s. cloth.

A PRACTICAL HANDY-BOOK of ELEMENTARY LAW, designed for the use of Articled Clerks, with a Course of Study and Hints on Reading for the Intermediate and Final Examinations. By M. S. MOSELY, Solicitor, Clifford's Inn Prizeman, M. T. 1867.

"This useful little book is intended for the use of articled clerks during the period of their articles. The style of this book is peculiar: it is an exaggeration of the style adopted by Mr. Haynes in his admirable 'Outlines of Equity.' The author seems to think the adoption of such a style the only way to make the study of the law popular, and we are not prepared to say he is wrong."—*Law Magazine and Review*.

"The design of this little book is to combine instruction, advice and amusement, if anything amusing can be extracted from the routine of a solicitor's office and the studies of articled clerks. The book will certainly be found useful by any articled clerk, for it contains much information which it is sometimes very troublesome to find, and the facetiousness of Mr. Mosely's manner will doubtless help to grease the course of a rough and uneasy subject."—*Law Journal*.

"There are few who read this book with care who will not readily admit that on many intricate points of law their notions have become much clearer than before their acquaintance with it. Both parts are well worked out, and will be found useful; but in the second division of each chapter the law student will find most valuable information, as there Mr. Mosely not only marks out the course of reading which he recommends for each year, but also carefully analyses the contents of each book, and points out those chapters and subjects which it will be most advantageous for the student to master at the first reading, and those which he ought to defer till a second perusal and a wider experience have made him more competent to understand them. The style is remarkably good, and, considering the subject, free from technical expressions."—*Irish Law Times*.

Rouse's Copyhold Manual.—Third Edition.

12mo., 10s. 6d. cloth.

THE COPYHOLD ENFRANCHISEMENT MANUAL, giving the Law, Practice and Forms in Enfranchisements at Common Law and under Statute, and in Commutations; with the Values of Enfranchisements from the Lord's various Rights: the Principles of Calculation being clearly explained, and made practical by numerous Rules, Tables and Examples. Also all the Copyhold Acts, and several other Statutes and Notes. Third Edition. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister at Law, Author of "The Practical Conveyancer," &c.

"This new edition follows the plan of its predecessor, adopting a fivefold division:—1. The Law. 2. The Practice, with Practical Suggestions to Lords, Stewards and Copyholders. 3. The Mathematical consideration of the Subject in all its Details, with Rules, Tables and Examples. 4. Forms. 5. The Statutes, with Notes. Of these, we can only repeat what we have said before, that they exhaust the subject; they give to the practitioner all the materials required by him to conduct the enfranchisement of a copyhold, whether voluntary or compulsory."—*Law Times*.

"When we consider what favor Mr. Rouse's Practical Man and Practical Conveyancer have found with the profession, we feel sure the legal

world will greet with pleasure a new and improved edition of his copyhold manual. The third edition of that work is before us. It is a work of great practical value, suitable to lawyers and laymen. We can freely and heartily recommend this volume to the practitioner, the steward and the copyholder."—*Law Magazine*.

"Now, however, that copyhold tenures are being frequently converted into freeholds, Mr. Rouse's treatise will doubtless be productive of very extensive benefit; for it seems to us to have been very carefully prepared, exceedingly well composed and written, and to indicate much experience in copyhold law on the part of the author."—*Solicitors' Journal*.

Shelford's Succession, Probate and Legacy Duties. Second Edition.

12mo., 16s. cloth.

THE LAW relating to the PROBATE, LEGACY and SUCCESSION DUTIES in ENGLAND, IRELAND and SCOTLAND, including all the Statutes and the Decisions on those Subjects: with Forms and Official Regulations. By LEONARD SHELFORD, Esq., of the Middle Temple, Barrister-at-Law. The Second Edition, with many Alterations and Additions.

"The book is written mainly for solicitors. Mr. Shelford has accordingly planned his work with careful regard to its practical utility and daily use."—*Solicitors' Journal*.

"One of the most useful and popular of his productions, and being now the text book on the

subject nothing remains but to make known its appearance to our readers. Its merits have been already tested by most of them."—*Law Times*.

"On the whole Mr. Shelford's book appears to us to be the best and most complete work on this extremely intricate subject."—*Law Magazine*.

Davis's Law of Master and Servant.

12mo. 6s. cloth.

THE MASTER AND SERVANT ACT, 1867 (30 & 31 Vict. c. 141), with an Introduction, copious Notes, Tables of Offences, and Forms of Proceedings, prepared expressly for this Work. By **JAMES E. DAVIS, Esq.,** Barrister at Law, Stipendiary Magistrate, Stoke-upon-Trent.

* Besides the Act and copious Notes, Introduction, and a variety of Forms of Summons, Orders, Convictions, Recognizances, &c., specially prepared for this work, Tables have been framed classifying all the offences within the jurisdiction of Justices. It is hoped that this will be found useful, not only to Magistrates and their Clerks, but to the Legal Profession generally, for in consequence of the new Act not describing the offences, but merely referring to a schedule of seventeen former Acts, it is very difficult to say what cases are or are not within the purview of the new Act. The decisions of the Superior Courts, so far as they are applicable to the present law, are also given.

Woolrych's Law of Sewers.—Third Edition.

8vo., 12s. cloth.

A TREATISE of the LAW of SEWERS, including the DRAINAGE ACTS. By **HUMPHRY W. WOOLRYCH, Serjeant at Law.** Third Edition, with considerable Additions and Alterations.

"Two editions of it have been speedily exhausted, and a third called for. The author is an accepted authority on all subjects of this class."—*Law Times*.

"This is a third and greatly enlarged edition of a book which has already obtained an established reputation as the most complete discussion of the subject adapted to modern times. Since the treatise of Mr. Serjeant Callis in the early part of the 17th century,

no work filling the same place has been added to the literature of the Profession. It is a work of no slight labour to digest and arrange this mass of legislation; this task, however, Mr. Serjeant Woolrych has undertaken, and an examination of his book will, we think, convince the most exacting that he has fully succeeded. No one should attempt to meddle with the Law of Sewers without its help."—*Solicitors' Journal*.

Grant's Law of Corporations in General.

Royal 8vo., 26s. boards.

A PRACTICAL TREATISE on the LAW of CORPORATIONS in GENERAL, as well Aggregate as Sole; including Municipal Corporations; Railway, Banking, Canal, and other Joint-Stock and Trading Bodies; Dean and Chapters; Universities; Colleges; Schools; Hospitals; with *quasi* Corporations aggregate, as Guardians of the Poor, Churchwardens, Churchwardens and Overseers, etc.; and also Corporations sole, as Bishops, Deans, Canons, Archdeacons, Parsons, etc. By **JAMES GRANT, Esq.,** of the Middle Temple, Barrister at Law.

J. Chitty, jun's. Precedents in Pleading.—Third Edition.

Complete in One Vol. Royal 8vo., 38s. cloth.

J. CHITTY, JUN'S. PRECEDENTS in PLEADING; with copious Notes on Practice, Pleading and Evidence. Third Edition. By the late **TOMPSON CHITTY, Esq.,** and by **LEOFRIC TEMPLE, R. G. WILLIAMS, and CHARLES JEFFERY, Esquires, Barristers at Law.** (Part 2 may, for the present, be had separately, price 18s. cloth, to complete sets.)

"To enter into detailed criticism and praise of this standard work would be quite out of place. In the present instance the matter has fallen into competent hands, who have spared no pains. This valuable and useful work is brought down to the present time, altered in accordance with the cases and statutes now in force. Great care has been expended by the competent editors, and

its usefulness, as heretofore, will be found not to be confined to the chambers of the special pleader, but to be of a more extended character. To those who knew the work of old no recommendation is wanted, to those younger members of the profession who have not that privilege we would suggest that they should at once make its acquaintance."—*Law Journal*.

Scriven's Law of Copyholds.—5th Edit. by Stalman.

Abridged in 1 vol. royal 8vo., £1 : 10s. cloth.

A TREATISE ON COPYHOLD, CUSTOMARY FREEHOLD and ANCIENT DEMESNE TENURE, with the Jurisdiction of Courts Baron and Courts Leet. By JOHN SCRIVEN, Serjeant at Law. Fifth Edition, containing references to Cases and Statutes to 1867. By HENRY STALMAN, of the Inner Temple, Esq., Barrister at Law.

"No lawyer can see or hear the word 'copyhold' without associating with it the name of Scriven, whose book has been always esteemed not merely the best but the only one of any worth. Until a commutation of the tenure for a fixed rent-charge, after the manner of a tithe commutation, is compelled by the legislature, this treatise will lose none of its usefulness to the solicitors in the country."—*Law Times*.

"It would be wholly superfluous to offer one word of comment on the general body of the work. Scriven on Copyholds has for exactly

half a century been not only a standard work but one of unimpeachable authority, and in its pages the present generation has learned all that is known of copyhold and customary tenures. All that is necessary to say is, that in the present edition of Scriven on Copyholds Mr. Stalman has omitted what it was useless to retain, and inserted what it was necessary to add. Until copyholds have disappeared utterly, it is at least certain that Scriven on Copyholds by Stalman will hold undisputed sway in the profession."—*Law Journal*.

Davis's Law of Registration and Elections.

One small 12mo. vol., 15s. cloth.

MANUAL OF THE LAW AND PRACTICE OF ELECTIONS AND REGISTRATION. Comprising all the Statutes, with Notes and Introduction, and a Supplement containing the Cases on Appeal down to 1869, the Rules relating to Election Petitions, and a complete Index to the whole Work. By JAMES EDWARD DAVIS, Esq., Barrister at Law, Author of "Manual of Practice and Evidence in the County Courts," &c.

"A work, which, in our judgment, is the handiest and most useful of the manuals which the Reform Act of 1867 has brought into existence."—*Law Magazine*.

"We think this the best of the now numerous works on this subject. It has a great advantage in its arrangement over those which are merely new editions of works published before the recent legislation. To read through consecutively, in

order to obtain a fair mastery of the whole subject, we have no hesitation in highly recommending this work."—*Solicitors' Journal*.

"No one comes forward with better credentials than Mr. Davis, and the book before us seems to possess the qualities essential to a guide to a discharge of their duties by the officials. The scheme of Mr. Davis's work is very simple."—*Law Journal*.

THE SUPPLEMENT may be had separately, price 3s. sewed.

Browning's Divorce and Matrimonial Causes Practice.

Post 8vo., 8s. cloth.

THE PRACTICE and PROCEDURE of the COURT for DIVORCE and MATRIMONIAL CAUSES, including the Acts, Rules, Orders, copious Notes of Cases and Forms of Practical Proceedings, with Tables of Fees and Bills of Costs. By W. ERNST BROWNING, Esq., of the Inner Temple, Barrister-at-Law.

Brandon's Law of Foreign Attachment.

8vo., 14s. cloth.

A TREATISE upon the CUSTOMARY LAW of FOREIGN ATTACHMENT, and the PRACTICE of the MAYOR'S COURT of the CITY OF LONDON therein. With Forms of Procedure. By WOODTHORPE BRANDON, Esq., of the Middle Temple, Barrister-at-Law.

Mr. Oke's Magisterial Works.

1.

Oke's Magisterial Synopsis ; a Practical Guide for Magistrates, their Clerks, Attornies, and Constables ; Summary Convictions and Indictable Offences, with their Penalties, Punishments, Procedure, &c., being alphabetically and tabularly arranged : with a Copious Index. Eleventh Edition, much enlarged. By GEORGE C. OKE, Chief Clerk to the Lord Mayor of London. In 2 vols. 8vo. *(In the Press)*

"The tenth edition of this valuable compendium of magisterial law makes its appearance in two volumes, a great improvement for convenience of reference upon the single bulky volume of the former editions. The position which the work has gained and the growing demand for it are shown by the fact that a ninth edition was published so lately as 1866. In accordance with the suggestion made to Mr. Oke, the present edition has been prepared and issued immediately after the fourth edition of its equally useful companion the *Magisterial Formulist*. The careful and conscientious treatment which Mr. Oke always bestows upon whatever he takes in hand, entitles him to full credit when he says that 'many titles have been enlarged, much new matter inserted, and a variety of minute improvements made in the references, upon all of which I have bestowed my personal attention and utmost care.'—*Law Magazine*.

2.

Oke's Magisterial Formulist ; being a Complete Collection of Forms and Precedents for practical use in all Cases out of Quarter Sessions, and in Parochial Matters, by Magistrates, their Clerks, Attornies and Constables. By GEORGE C. OKE, Author of "*The Magisterial Synopsis*," &c. *Fourth Edition*, enlarged and improved. 8vo. 38s. cloth.

"This work is too well known to need eulogy. It is in universal use in magistrates' courts ; it has been out of print for some time, and a new edition was urgently required. We believe that Mr. Oke purposely delayed it that it might be made contemporaneous, or nearly so, with the *Synopsis*. The contents are brought down to the end of last year, and consequently it includes all the forms required by the new statutes and decisions of the six years that have elapsed since the publication of the third edition. It is a book that has been known so long, and so extensively, that no further description of it is needed now."—*Law Times*.

3.

Oke's Handy Book of the Game and Fishery Laws ; containing the whole Law as to Game, Licences and Certificates, Poaching Prevention, Trespass, Rabbits, Deer, Dogs, Birds and Poisoned Grain throughout the United Kingdom, and Private and Salmon Fisheries in England. Systematically arranged, with the Acts, Decisions, Notes, Forms, Suggestions, &c. By GEORGE C. OKE, Author of "*The Magisterial Synopsis*," &c. *Second Edition*. 12mo. 10s. 6d. cloth.

"Mr. Oke's name on a title page is a guarantee for at least a thoroughly *practical* work. He knows precisely what is wanted, and he supplies it. The arrangement is new and very convenient. It is what it professes to be, a handbook for the sportsman and his legal adviser."—*Law Times*.

4.

Oke's Law of Turnpike Roads ; comprising the whole of the General Acts now in force, including those of 1861 ; the Acts as to Union of Trusts, for facilitating Arrangements with their Creditors, as to the interference by Railways with Roads, their non-repair, and enforcing contributions from Parishes, &c., practically arranged. With Cases, copious Notes, all the necessary Forms, and an elaborate Index, &c. By GEORGE C. OKE. *Second Edition*. 12mo. 18s. cloth.

"All Mr. Oke's works are well done, and his '*Turnpike Laws*' is an admirable specimen of the class of books required for the guidance of magistrates and legal practitioners in country districts."—*Solicitors' Journal*.

Shelford's Law of Railways.—Fourth Edition by Glen.

In 2 thick vols. royal 8vo., 63s. cloth.

SHELFORD'S LAW of RAILWAYS; containing the whole of the Statute Law for the Regulation of Railways in England, Scotland and Ireland: with copious Notes of Decided Cases upon the Statutes, Introduction to the Law of Railways, and Appendix of Official Documents. Fourth Edition. By **WILLIAM CUNNINGHAM GLEN**, Barrister-at-Law, Author of the "Law of Highways," "Law of Public Health and Local Government," &c.

From the LAW MAGAZINE.

"Though we have not had the opportunity of going conscientiously through the whole of this elaborate compilation, we have been able to devote enough time to it to be able to speak in the highest terms of the judgment and ability with which it has been prepared. Its execution quite justifies the reputation which Mr. Glen has already acquired as a legal writer, and proves that no one could have been more properly singled out for the duty he has so well discharged. *The work must take its unquestionable position as the leading Manual of the Railway Law of Great Britain.* The cases seem to have been examined, and their effect to be stated with much care and accuracy, and no channel from which information could be gained has been neglected. Mr. Glen, indeed, seems to be saturated with knowledge of his subject. The value of the work is greatly increased by a number of supplemental decisions, which give all the cases up to the time of publication, and by an index which appears to be thoroughly exhaustive."

From the LAW TIMERS.

"Mr. Glen has done wisely in preserving that reputation, and, as far as possible, the text of Shelford—though very extensive alterations and additions have been required. But he has a claim of his own. He is a worthy successor of the original author, and possesses much of the same industry, skill in arrangement and astuteness in enumerating the points really decided by cited cases. But we have said enough of a work already so well known. It will have a place not in the library of the lawyer alone. It is a book which every railway office should keep on its shelf for reference."

From the LAW JOURNAL.

"Mr. Glen has modestly founded his work as a superstructure on that of Mr. Leonard Shelford, but he has certainly claims to publish it as a purely independent composition. The toil has been as great, and the reward ought to be as complete, as if Mr. Glen had disregarded all his predecessors in the production of treatises on railway law. Since the year 1864 he has been

unceasingly engaged in collecting materials, and though he has been ready for the printer for some time, and has delayed the appearance of the volumes in the expectation of legislative changes in railway law, yet he has expended full five years of care and attention on his work. Let us hope that he will have no cause to think his labour has been in vain. *At any rate we may venture to predict that Mr. Cunningham Glen's edition of Shelford on Railways will be the standard work of our day in that department of law.*"

From the JUSTICE OF THE PEACE.

"Far be it from us to undervalue Mr. Shelford's labours, or to disparage his merits. But we may nevertheless be permitted to observe that *what has hitherto been considered as the best work on the subject* (Shelford) *has been immeasurably improved by the application of Mr. Glen's diligence and learning.* Sufficient, however, has been done to show that it is in every respect worthy of the reputation which the work has always enjoyed. We feel little doubt that the credit of that work will be greatly increased by Mr. Glen's instrumentality, and that not only will he have ably maintained its reputation by his successful exertions, but that he will have added materially to it."

From the SOLICITORS' JOURNAL.

"The practitioner will find here collected together all the enactments bearing on every possible subject which may come before him in connection with railways or railway travelling. Whatever questions may arise the lawyer who has this book upon his shelves, may say to himself: 'there has been any legislation at all connected with this branch of the subject I shall at once find it in Shelford'; and it needs not to be said that on this account the book will be a very 'comfortable' one to possess. The collection is equally exhaustive in the matter of rules, orders, precedents and documents of official authority. To sum up our review; as a collection of statutes and general information the work will prove extremely useful, because in these respects it is so perfectly exhaustive."

Glen's Poor Law Orders.—Seventh Edition.

Post 8vo., 21s. cloth.

The **GENERAL CONSOLIDATED** and other **ORDERS** of the **POOR LAW COMMISSIONERS** and the **POOR LAW BOARD**; with explanatory Notes elucidating the Orders, Tables of Statutes, Cases and Index to the Orders and Cases. By **W. C. GLEN**, Esq, Barrister at Law. Seventh Edition.

Chadwick's Probate Court Manual.

Royal 8vo., 12s. cloth.

EXAMPLES of ADMINISTRATION BONDS for the COURT of PROBATE; exhibiting the Principle of various Grants of Administration, and the correct Mode of preparing the Bonds in respect thereof; also Directions for preparing the Oaths, arranged for practical utility. With Extracts from the Statutes; also various Forms of Affirmation prescribed by Acts of Parliament, and a Supplemental Notice, bringing the work down to 1865. By SAMUEL CHADWICK, of Her Majesty's Court of Probate.

"We undertake to say that the possession of this volume by practitioners will prevent many a hitch and awkward delay, provoking to the lawyer himself and difficult to be satisfactorily explained to the clients."—*Law Magazine and Review*.

"Mr. Chadwick's volume will be a necessary

part of the law library of the practitioner, for he has collected precedents that are in constant requirement. This is purely a book of practice, but therefore the more valuable. It tells the reader what to do, and that is the information most required after a lawyer begins to practise."—*Law Times*.

Grant's Law of Banking.—Second Edition by Fisher.

8vo. 21s. cloth.

GRANT'S LAW of BANKERS and BANKING and BANKS OF ISSUE, Limited and Chartered, and Winding-up; Directors, Managers and Officers; and the Law as to Cheques, Circular Notes or Letters of Credit, Bank Notes, Exchequer Bills, Coupons, Deposits, &c. (Appendix contains the Bank Notes Issue Bill, and Reasons for Bill, and Official Bank Returns.) Second Edition. By R. A. FISHER, Esq., of the Middle Temple, Barrister-at-Law.

"The present editor has very much increased the value of the original work, a work whose sterling merits had already raised it to the rank of a standard text-book."—*Law Magazine*.

"No man in the profession was more competent to treat the subject of Banking than Mr. Grant. This volume appears opportunely. To all engaged in the litigations, as well as to all legal advisers of Bankers, Mr. Grant's work will be an invaluable assistant. It is a clear and careful treatise on a subject not already exhausted, and it must become the text-book upon it."—*Law Times*.

"A Second Edition of Mr. Grant's well-

known treatise on this branch of the law has been called for and very ably supplied by Mr. Fisher."—*Law Times, Second Notice*.

"The learning and industry which were so conspicuous in Mr. Grant's former work are equally apparent in this. The book supplies a real want, which has long been felt both by the profession and by the public at large."—*Jurist*.

"We commend this work to our readers. It is at once practical and intelligible, and is of use alike to the unprofessional as well as the professional reader. No bank, whether a private concern or a joint-stock company, should be without it."—*Money Market Review*.

Parkinson's Common Law Chamber Practice.

12mo., 7s. cloth.

A HANDY BOOK FOR THE COMMON LAW JUDGES' CHAMBERS. By GEO. H. PARKINSON, Chamber Clerk to the Hon. Mr. Justice Byles.

"For this work Mr. Parkinson is eminently qualified."—*Jurist*.

"It is extremely well calculated for the purpose for which it is intended. So much work is now done in Common Law Chambers by junior clerks that such a little treatise is much wanted. Mr. Parkinson has performed his task skillfully and with care."—*Solicitors' Journal*.

"The practice in Chambers has become sufficiently important to call for a treatise devoted to it, nor could a more competent man for the task

have presented himself than Mr. Parkinson, whose great experience as well as intelligence have long placed him in the position of an authority on all matters appertaining to this peculiar but very extensive branch of Common Law Practice."—*Law Times*.

"There is much that would prove very useful to the practitioner in Mr. Parkinson's compilation, and which, so far as we are aware, is not to be found in any other book collected with equal conciseness."—*Law Magazine and Review*.

Bulley and Bund's Bankruptcy Manual: with Supplement.

12mo., 16s. cloth.

A MANUAL of the LAW and PRACTICE of BANKRUPTCY as Amended and Consolidated by the Statutes of 1869: with an APPENDIX containing the Statutes, Orders and Forms. By JOHN F. BULLEY, B.A., of the Inner Temple, Esq., Barrister at Law, and J. W. WILLIS-BUND, M.A., LL.B., of Lincoln's Inn, Esq., Barrister at Law. With Supplement, including the Orders to 30th April, 1870.

THE SUPPLEMENT may be had separately, 1s. sewed.

"It would be impossible, within our limits, to place before our readers any worthy résumé of this complete Manual. The essential merit of the

work is completeness, and we think we may assure our readers that work so well done will meet with its reward."—*Law Magazine*.

Coombs' Manual of Solicitors' Bookkeeping.

8vo., 10s. 6d. cloth.

A MANUAL of SOLICITORS' BOOKKEEPING: comprising Practical Exemplifications of a Concise and Simple Plan of Double Entry, with Forms of Account and other Books relating to Bills, Cash, &c., showing their Operation, giving Instructions for Keeping, Posting and Balancing them, and Directions for Drawing Costs, adapted to a large or small, sole or partnership business. By W. B. COOMBS, Law Accountant and Costs Draftsman.

••• *The various Account Books described in the above System, the forms of which are copyright, may be had from the Publishers at the prices stated in the work, page 274.*

"It adds some excellent instructions for drawing bills of costs. Mr. Coombs is a practical man, and has produced a practical book."—*Law Times*.

"A work in which the really superfluous has been omitted, and that only which is necessary and useful in the ordinary routine in an attorney's office has been retained. He has performed his task in a masterly manner, and in doing so has given the why and the wherefore of the whole system of Solicitors' Bookkeeping. The volume is the most comprehensive we remember to have seen on the subject, and from the clear and intelligible manner in which the whole has been worked out it will render it unexceptionable in the hands of the student and the practitioner."—*Law Magazine*.

"So clear do the instructions appear, that a tyro of average skill and abilities, with application, could under ordinary circumstances open and keep the accounts of a business; and, so far as we can judge, the author has succeeded in his endeavour to divest Solicitors' Bookkeeping

of complexity, and to be concise and simple, without being inefficient."—*Law Journal*.

"This is not merely a valuable addition to the library of every solicitor, it is a book that every articulated clerk, now that intermediate examinations embrace bookkeeping, will be read with profit and benefit to himself. It may be fairly said to exhaust the subject of which it treats."—*Solicitors' Journal*.

"Mr. Coombs' Manual of Solicitors' Bookkeeping, in our opinion, takes the safe middle course, between too great intricacy of arrangement on one side, and want of detail and explanation on the other. His system can be equally followed in a small office, where a regular accountant is not employed, and in an office where the staff is large. Solicitors who manage property will find the specimens of rental accounts given in the Appendix very useful."—*Irish Law Times*.

"This is a work of considerable extent, prepared at the request of eminent solicitors, by an experienced law accountant."—*Athenæum*.

Lushington's Naval Prize Law.

Royal 8vo., 10s. 6d. cloth.

A MANUAL of NAVAL PRIZE LAW By GODFREY LUSHINGTON, of the Inner Temple, Esq., Barrister at Law.

Lovesy's Law of Arbitration (Masters and Workmen).

12mo. 4s. cloth.

(Dedicated, by permission, to Lord St. Leonards.)

THE LAW of ARBITRATION between MASTERS and WORKMEN, as founded upon the Councils of Conciliation Act of 1867 (30 & 31 Vict. c. 105), the Masters and Workmen Act (5 Geo. 4, c. 96), and other Acts, with an Introduction and Notes. By C. W. LOVESY, Esq., of the Middle Temple, Barrister at Law.

Hertslet's Commercial Treaties.

8vo., Vol. XII., 40s. cloth.

HERTSLET'S TREATIES of Commerce, Navigation, Slave Trade, Post Office Communications, Copyright, &c., at present subsisting between Great Britain and Foreign Powers. Compiled from Authentic Documents by EDWARD HERTSLET, Esq., Librarian and Keeper of the Papers of the Foreign Office. Vol. XII. includes an INDEX OF SUBJECTS to the Twelve published Volumes, which is also sold separately, price 10s. in cloth boards.

•• Vol. 1, price 12s.; Vol. 2, price 12s.; Vol. 3, price 18s.; Vol. 4, price 18s.; Vol. 5, price 20s.; Vol. 6, price 25s.; Vol. 7, price 30s.; Vol. 8, price 30s.; Vol. 9, price 30s.; Vol. 10, price 30s.; Vol. 11, price 30s.; may be had separately to complete sets, or the Work may be had complete in Twelve Volumes, price £14 : 15s., boards.

LIST OF SUBJECTS:—Aliens—Army—Bankruptcy—Births Abroad—Boundaries—Brokers—Burial Grounds Abroad—Chapels, Chaplains, &c., Abroad—Claims—Coal—Coasting Trade—Collisions at Sea—Colonial—Commerce and Navigation (Treaties, &c.)—Consuls—Copyright—Criminals: Murder—Currency—Deaths Abroad—Deserters—Diplomatic—Duties: Vessels and Cargoes—Emigration and Immigration—Enlistments—Extradition—Factories—Fisheries, &c.—Flags—Free Ports—Government—Jurisdiction—Justice—Labourers—Law—Light Dues, &c.—Loans—Lotteries—Maritime Law—Marriages, Births, Deaths, &c.—Mediations, Awards, &c.—Medical—Most Favoured Nation—Navigation—Navy—Neutrality—Offenders (Criminals)—Orders, Medals, &c.—Passenger Vessels, &c.—Passports—Patents—Pensions, &c.—Pilots: Pilots—Piracy: Pirates—Postal (Treaties, &c.)—Postal (Warrants, Acts, &c.)—Precedence—Privileges: Vessels and Cargoes—Prizes, Seizures, &c.—Property—Quarantine—Reciprocity—Religion: Chapels, &c.—Revenues (Foreign)—Right of Search and Visit—Rivers, Lakes, &c.—Seamen—Shipping Dues, &c.—Shipwrecks—Slave Trade: Slavery, &c.—Smuggling—Sound Dues—Stade Toll—Sugar—Tariffs—Taxes—Telegraph—Territories—Trade—Trade Marks—Trade and Navigation—War, &c.—Wills—Wrecks and Salvage—Yachts.

Trower's Church Building Laws.

Post 8vo., 8s. cloth.

THE LAW of the BUILDING of CHURCHES, PARSONAGES, and SCHOOLS, and of the Division of Parishes and Places. By CHARLES FRANCIS TROWER, M.A., of the Inner Temple, Esq., Barrister at Law, late Fellow of Exeter College, Oxford, and late Secretary of Presentations to Lord Chancellor Westbury.

"We may pronounce it a useful work. It contains a great mass of information of essential import, and those who, as parishioners, legal advisers, or clergymen, are concerned with glebes, endowments, district chapelries, parishes, ecclesiastical commissions, and such like matters, about which the public, and notably the clerical public, seem to know but little, but which it is needless to say are matters of much importance."—*Self-critic's Journal*.

"His book is just the one we could wish every clergyman to possess, for if it was in the hands of our readers they would be saved the trouble of asking us very many questions."—*Clerical Journal*.

"In a well-arranged volume this gentleman points out concisely and intelligibly how the difficulties which usually beset parties in such matters may be avoided."—*Oxford University Herald*.

"On all the topics germane to its title this volume will be found a handy book of ecclesiastical law, and should on that account be made widely known among the clergy."—*Church Mail*.

"It is a compact and handy treatise, very clearly written, well arranged, easy of reference, and, besides a good table of contents, it has an elaborate index. It is a book we are glad to have and to recommend."—*Literary Churchman*.

Field's Law Relating to Curates, &c.

Post 8vo., 6s. cloth

THE LAW RELATING to PROTESTANT CURATES and the RESIDENCE of INCUMBENTS or their BENEFICES in ENGLAND and IRELAND. By C. D. FIELD, M.A., LL.D., late Scholar of Trin. Coll. Dublin, and now of H. M.'s Bengal Civil Service; recently Judge of the Principal Court of Small Causes at Kishnaghur; and Registrar of H. M.'s High Court of Judicature at Fort William in Bengal; Author of "The Law of Evidence in India," &c.

Michael and Will's Law of Gas and Water Supply.

Post 8vo., 18s. cloth.

THE LAW of GAS and WATER SUPPLY; comprising the Rights and Duties as well of Local Authorities as of Private Companies in regard thereto, and including the Legislation of the last Session of Parliament. By W. H. MICHAEL and J. SHIRESS WILL, Esqrs., Barristers at Law.

"Little doubt exists that any gas and water company resting contented without having parliamentary powers must be considered as pursuing a most dangerous policy. As to the steps to be taken to place matters on a proper basis, we refer those interested to the work of Messrs. Michael and Will, where all the rights and liabilities of companies under the acts are well and fully set forth, and we feel thoroughly justified in recommending the volume."—*Law Times*.

"On the whole we can thoroughly recommend the work to those who require guidance on the subject. To parliamentary practitioners and to the legal advisers of the local authorities which have of late in so many places undertaken the management of the gas and water supply, it will doubtless be a convenient manual."—*Solicitors' Journal*.

"This compilation appears to us to be carefully

arranged, and cannot fail to be of considerable use to the large section of the community personally interested in the subject to which it relates. The work before us supplies the necessary information for enabling people to put the law, such as it is, in operation."—*Pall Mall Gazette*.

"There is an able introduction by Mr. Michael on gas supply, and an essay of equal merit on water supply by Mr. Will. There is a copious and careful index, a list of cases, and an index of statutes. On the whole, we think that we may safely say that this is an honest and a successful attempt to deal with the laws affecting gas and water supply."—*Law Journal*.

"Of this work it may be said, that no gas or water company or local authority can well do without it. The names of the writers are a sufficient guarantee for the completeness of the work."—*Journal of Gas and Water Supply*.

Sir T. E. May's Parliamentary Practice.—Sixth Edition.

One very thick volume, 8vo., 35s. cloth.

A TREATISE on the LAW, PRIVILEGES, PROCEEDINGS and USAGE of PARLIAMENT. By Sir THOMAS ERSKINE MAY, K.C.B., of the Middle Temple, Barrister at Law; Clerk of the House of Commons. Sixth Edition, Revised and Enlarged.

CONTENTS:—Book I. Constitution, Powers and Privileges of Parliament.—Book II. Practice and Proceedings in Parliament.—Book III. The Manner of Passing Private Bills, with the Standing Orders in both Houses, and the most recent Precedents.

"Sir T. Erskine May deserves the best thanks of all who are interested in parliamentary proceedings, for the care and attention he has bestowed in preparing this edition of his valuable work."—*Law Magazine*.

"We hail with satisfaction a new edition of this admirable work. The politician, the lawyer, the parliamentary agent and the educated gentleman, will find here a teacher, a guide, a digest of practice and a pleasing companion. To legal readers, the first portion of this work is of the most value. We may advert to the great care with which the author has noted up and incorporated in this new edition all the changes and events of importance since the publication of the fifth edition."—*Law Journal*.

"Six editions in twenty-four years attest the estimation in which this great work is held by the members of successive Parliaments, by the promoters of private bills, and by constitutional lawyers. It is an exhaustive treatise on that most lawless of all law the Law of Parliament."—*Law Times*.

"Perhaps no work has achieved a greater

reputation among lawyers than May's Parliamentary Practice. Since the first publication in 1844, a succession of editions have been called for, and now, after an interval of four years since the issue of the fifth, a sixth edition has been found necessary. The work is too well-known to need the repetition of any description of its scope."—*Solicitors' Journal*.

"His well-known treatise on the 'Law and Usage of Parliament' at once placed him upon a level with Hatsell, and is now the recognized text-book, not in England only, but in her colonies, and wherever parliamentary government is attempted. It may almost be said to be better known at Australia than at Westminster, as the practice of colonial legislatures is less settled than our own, and our countrymen at the Antipodes are more combative than ourselves upon points of order and procedure. In Germany it has been translated for the use of the Prussian and North German Parliaments, and we have found it in a bookseller's shop at Pesth, in the Hungarian language, under the name of 'May Erskine Tamás.'—*Times*.

Drewry's Equity Pleader.

12mo., 6s. cloth.

A CONCISE TREATISE on the PRINCIPLES of EQUITY PLEADING; with Precedents. By C. STEWART DREWRY, of the Inner Temple, Esq., Barrister at Law.

"It will be found of great utility as introductory to the more elaborate treatises, or to

refresh the memory after the study of the larger books."—*Law Times*.

Glen's Law of Highways.—Second Edition.

Post 8vo., 20s. cloth.

The **LAW of HIGHWAYS**: comprising the Highway Acts 1835, 1862 and 1864; the South Wales Highway Act; the Statutes and Decisions of the Courts on the subject of Highways, Bridges, Ferries, &c., including the Duties of Highway Boards, Surveyors of Highways, the Law of Highways in Local Board of Health Districts; Highways affected by Railways, and Locomotives on Highways. With an Appendix of Statutes in force relating to Highways. By **W. CUNNINGHAM GLEN, Esq., Barrister at Law.** Second Edition.

"Altogether we may confidently venture to confirm the statement in the preface that it may now fairly claim to be recognized as a standard authority on the law of highways by those who are engaged officially or otherwise in the administration of that branch of the law. It is so as from personal knowledge can affirm, and, we may add, that it is received by them as a trustworthy guide in the discharge of their onerous duties."—*Law Times*.

"The present edition of Mr. Glen's work contains a great deal of valuable matter which is entirely new. To those interested in the law of highways this manual as it now appears will be found a safe and efficient guide."—*Law Magazine*.

"Mr. Glen has an established reputation in the legal profession as a careful and laborious writer, and this new edition of his new work on highway law will convince those who refer to it that he has neglected no topic likely to be useful to those whose duties require them to have a knowledge of this particular branch of the law. This work aspires above others which profess merely to be annotated reprints of acts of parliament. It will

be found to contain much information which might be looked for elsewhere in vain. The general law upon the subject is set forth with a care and lucidity deserving of great praise, and a good index facilitates reference, and renders this work the most complete on this important subject which has yet been published."—*Justices of the Peace*.

"Mr. Glen may well say that an entire revision of the first edition was necessitated by the recent statutes, and his second edition is a bulky volume of 800 pages. His work may be read with satisfaction by the general student as well as referred to with confidence by the practitioner. We need say nothing further of this second edition than that we think it likely to maintain fully the reputation obtained by its predecessor. It has the advantages, by no means unworthy of consideration, of being well printed and well indexed, as well as well arranged, and a copious index of statutes renders it a perfect compendium of the authorities bearing in any way on the law of highways."—*Solicitors' Journal*.

Fry's Specific Performance of Contracts.

8vo., 16s. cloth.

A TREATISE on the **SPECIFIC PERFORMANCE of CONTRACTS**, including those of Public Companies, with a Preliminary Chapter on the Provisions of the Chancery Amendment Act, 1858. By **EDWARD FRY, B.A., of Lincoln's Inn, Esq., Barrister at Law.**

"It will be seen what a masterly grasp the author has taken of his subject, and his treatment of the various parts of it equally exhibits the hand of a man who has studied the law as a science. He is skilful in the extraction of principles, precise in the exposition of them, apt in their application to the particular case, but in all he is thoroughly practical. The practitioner who uses it as a text book will find in it an adviser who will tell him not only what the law is, but how it may be enforced."—*Law Times*.

"Mr. Fry's work presents in a reasonable compass a large quantity of modern learning on the subject of contracts, with reference to the common remedy by specific performance, and will thus be acceptable to the profession generally."—*Law Chronicle*.

"There is a closeness and clearness in its style, and a latent fulness in the exposition, which not

only argue a knowledge of the law, but of those varying circumstances in human society to which the law has to be applied."—*Spectator*.

"Mr. Fry's elaborate essay appears to exhaust the subject, on which he has cited and brought to bear, with great diligence, some 1,500 cases, which include those of the latest reports."—*Law Magazine and Review*.

"Although a professional work, it is sufficiently popular in style to be serviceable to all persons engaged in commercial or joint-stock undertakings."—*The Times*.

"The law of specific performance is a growing law just now, and the characteristic which gives it special value to Mr. Fry's work is, that the recent cases are as well digested in his mind as the older ones. Mr. Fry's is one of the best specimens of the modern law book."—*The Economist*.

Phillips's Law of Lunacy.

Post 8vo., 18s. cloth.

THE **LAW CONCERNING LUNATICS, IDIOTS and PERSONS of UNSOUND MIND.** By **CHARLES PALMER PHILLIPS, M.A., of Lincoln's Inn, Esq., Barrister at Law, and Secretary to the Commissioners of Lunacy.**

"Mr. C. P. Phillips has in his very complete, elaborate and useful volume presented us with an excellent view of the present law as well as the practice relating to lunacy."—*Law Magazine and Review*.

"The work is one on which the author has evidently bestowed great pains, and which not only bears the mark of great application and research, but which shows a familiarity with the subject."—*Justice of the Peace*.

Butt on Compensation under the Irish Land Act, 1870.

Royal 8vo., 25s. cloth.

A PRACTICAL TREATISE on the NEW LAW of COMPENSATION to TENANTS, and the other Provisions of the Landlord and Tenant Act, 1870; with an Appendix of Statutes and Rules, and a Chapter on the recent Judgment in the Court of Appeal in Chancery. By ISAAC BUTT, Esq., of the Inner Temple, Barrister at Law, one of Her Majesty's Counsel in Ireland.

"It is no small praise to say that this elaborate work is worthy of the high reputation of Mr. Butt, and yet that commendation would not fairly set forth the merit of a treatise which cannot fail to vastly enhance the reputation of its author. To those who

are concerned in the working of the act this book will be simply indispensable, and it is hardly going too far to assert that it will give a tone to the interpretation of the law."—*Law Journal*.

Brandon's Mayor's Court Practice.

8vo., 3s. 6d. cloth.

EPITOME of the NOTES of PRACTICE of the MAYOR'S COURT PRACTICE of the CITY of LONDON in ordinary Actions. By WOODTHORPE BRANDON, Esq., Barrister at Law.

Glen's Law of Public Health.—Sixth Edition.

8vo., 30s. cloth.

The LAW relating to PUBLIC HEALTH and LOCAL GOVERNMENT, including the Law relating to the Removal of Nuisances injurious to Health, the Prevention of Diseases, and Sewer Authorities; with the Statutes and Cases. By W. CUNNINGHAM GLEN, of the Middle Temple, Esq., Barrister at Law.

"We can thoroughly recommend the work, not only to lawyers, but also to members of local boards, and to such, if any, of our legislators as wish to get up the subject."—*Solicitors' Journal*.

"It is enough to say that as a well-arranged collection of the law as it is, with notes of the

various decisions upon it by the courts, sensible instructions and practical forms, together with a most copious index, by which this large mass of law is rendered readily accessible, there is no book on the subject bearing any comparison with this one by Mr. Glen."—*Law Times*.

Smith's Practice of Conveyancing.

Post 8vo., 6s. cloth.

AN ELEMENTARY VIEW of the PRACTICE of CONVEYANCING in SOLICITORS' OFFICES; with an Outline of the Proceedings under the Transfer of Land and Declaration of Title Acts, 1862, for the use of Articled Clerks. By EDMUND SMITH, B.A., late of Pembroke College, Cambridge. Attorney and Solicitor.

Wills on Circumstantial Evidence.—Fourth Edition.

8vo., 10s. cloth.

AN ESSAY on the PRINCIPLES of CIRCUMSTANTIAL EVIDENCE. Illustrated by numerous Cases. By the late WILLIAM WILLS, Esq. Fourth Edition, edited by his Son, ALFRED WILLS, Esq., Barrister at Law.

Powell on Evidence.—Third Edition by Cutler & Griffin.

12mo., 16s. cloth.

THE PRINCIPLES and PRACTICE of the LAW of EVIDENCE. By EDMUND POWELL, M.A., of the Inner Temple, Barrister at Law. Third Edition by JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London; and EDMUND FULLER GRIFFIN, B.A., of Lincoln's Inn, Barrister at Law. To which is added a SUPPLEMENT containing the alterations in the Law of Evidence to Michaelmas, 1869.

The Supplement may be had separately price 1s. sewed.

"We have very great pleasure in noticing this edition of a work with which we have long been familiar. It was certainly a good idea to make the book useful to the equity practitioner. It was a still better idea to adapt the Anglo-Indian rules of evidence, which must assist materially those who are studying in England for the Indian bar, or preparing for the Indian civil service. Mr. Cutler, being Professor of Indian Jurisprudence at King's College, has executed this latter branch of the work with the ability which was to be expected from him, and we can heartily recommend this excellent edition of Mr. Powell's book as likely to prove of very wide utility."—*Law Times*.

"To put before students in an attractive and concise form the principles of the laws of evidence the authors have achieved a success. The treatise before us has with great care and skill incorporated the principles of evidence observed in equity, and also the salient rules adopted in the Anglo-Indian courts. While we think that the sphere of this treatise must be confined to the education of students, we have no hesitation in asserting that within that sphere the book is a great success, and we cordially recommend the volume to students both for the English bar and for the Indian bar. Its simplicity and perspicuity render it also a valuable aid to members of the Indian civil service."—*Law Journal*.

"This is a new edition of a work which we fancy has scarcely been as well known as it deserves. It has not of course the pretensions to completeness of Mr. Pitt Taylor's book, nor possibly has it so much merit as an original and scientific treatise as Mr. Best's, at the same time it is probably more useful than either for ready reference in court on ordinary points. The present volume is of handy size, is moderately cheap, and its contents are re-

markably well arranged, so that anything it contains can be rapidly found. We think this will be enough to make the work useful to practitioners on circuit, at quarter sessions, and especially in county courts where access to a library is not usually to be had and it is inconvenient or impossible to take many or large books. To students and young barristers also the book will be useful, not only for reading at home, as more practical than Best and less detailed than Taylor, but also for taking with them into court."—*Solicitors' Journal*.

"This is a good edition of a very useful work. The book itself we have always considered as well adapted for the student and convenient for the practitioner. It explains principles clearly, and illustrates them without overloading them by the cases quoted. The work is more practical in its object than that of Mr. Best, and treats the subject in a more succinct manner than Mr. Pitt Taylor. There could be no better introduction to the study of the law of evidence than Mr. Powell's book, whilst it is perfectly suitable for ordinary reference, and the care that has been bestowed on it by the present editors will, we think, considerably enhance its value. The law has been brought down to the close of last year, and the principles of the law of evidence followed by the Court of Chancery have been incorporated in the work, and the rules of evidence adopted by the Anglo-Indian courts have been referred to, the chief part of the Indian Evidence Act being in the appendix. This last feature of the work will render it very valuable for those who are studying for the Indian civil service, and will not be without interest for all who wish to understand thoroughly the principles of the law of evidence."—*Law Magazine and Review*.

* * * Although in this work the most important decisions only are quoted, and as a rule but one authority is given for each proposition, yet there are upwards of 400 cases cited therein which do not appear in the table of cases prefixed to the latest edition of "Taylor on Evidence."

Holland on the Form of the Law.

8vo., 7s. 6d. cloth.

ESSAYS upon the FORM of the LAW. By THOMAS ERSKINE HOLLAND, M.A., Fellow of Exeter College, Oxford, and of Lincoln's Inn, Barrister at Law.

"A work of great ability."—*Athenaeum*.

"Entitled to very high commendation."—*Law Times*.

"The essays of an author so well qualified to write upon the subject."—*Law Journal*.

"We can confidently recommend these

essays to our readers."—*Law Magazine*.

"A work in which the whole matter is easily intelligible to the lay as well as the professional public."—*Saturday Review*.

"Mr. Holland's extremely valuable and ingenious essays."—*Spectator*.

Wigram on Extrinsic Evidence as to Wills.

Fourth Edition. 8vo., 11s. cloth.

AN EXAMINATION OF THE RULES OF LAW respecting the Admission of EXTRINSIC EVIDENCE in Aid of the INTERPRETATION OF WILLS. By the Right Hon. Sir JAMES WIGRAM, Knt. The Fourth Edition, prepared for the press with the sanction of the learned Author, by W. KNOX WIGRAM, M.A., of Lincoln's Inn, Esq., Barrister-at-Law.

"In the celebrated treatise of Sir James Wigram, the rules of law are stated, discussed and explained in a manner which has excited the

admiration of every judge who has had to consult it."—*Lord Kingsdown, in a Privy Council Judgment, July 8th, 1858.*

Williams's Common Law Pleading and Practice.

8vo., 12s. cloth.

An INTRODUCTION to PRACTICE and PLEADING in the SUPERIOR COURTS of LAW, embracing an outline of the whole proceedings in an Action at Law, on Motion, and at Judges' Chambers; together with the Rules of Pleading and Practice, and Forms of all the principal Proceedings. By WATKIN WILLIAMS, Esq., M.P., of the Inner Temple, Barrister at Law.

"For the Student especially the book has features of peculiar value, it is at the same time scientific and practical, and throughout the work there is a judicious union of general principles

with a practical treatment of the subject, illustrated by forms and examples of the main proceedings."—*Jurist.*

Bainbridge's Law of Mines and Minerals.—3rd Edit.

8vo., 30s. cloth.

A TREATISE on the LAW of MINES and MINERALS. By WILLIAM BAINBRIDGE, Esq., F.G.S., of the Inner Temple, Barrister at Law. Third Edition, carefully revised, and much enlarged by additional matter relating to manorial rights—rights of way and water and other mining easements—the sale of mines and shares—the construction of leases—cost book and general partnerships—injuries from undermining and inundations—barriers and working out of bounds. With an Appendix of Forms and Customs and a Glossary of English Mining Terms.

"When a work has reached three editions, criticism as to its practical value is superfluous. We believe that this work was the first published in England on the special subject of mining law—others have since been published—but we see no reason in looking at the volume before us to believe that it has yet been superseded."—*Law Magazine.*

"Mr. Bainbridge was we believe the first to collect and publish, in a separate treatise, the Law of Mines and Minerals, and the work was so well done that his volume at once took its place in the law library as the text book on the subject to which it was devoted. This work must be already familiar to all readers whose practice brings them in any manner in connection with mines or mining, and they will know its value. We can only say of this new edition that it is in all respects worthy of its predecessors."—*Law Times.*

"After an interval of eleven years we have to welcome a new edition of Mr. Bainbridge's

work on mines and minerals. It would be entirely superfluous to attempt a general review of a work which has for so long a period occupied the position of the standard work on this important subject. Those only who, by the nature of their practice, have learned to lean upon Mr. Bainbridge as on a solid staff, can appreciate the deep research, the admirable method, and the graceful style of this model treatise. Therefore we are merely reduced to the inquiry, whether the law has, by force of statutes and of judicial decisions, undergone such development, modification, or change since the year 1856 as to justify a new edition? That question may be readily answered in the affirmative, and the additions and corrections made in the volume before us furnish ample evidence of the fact. It may be also stated that this book, being priced at 30s., has the exceptional character of being a cheap law publication."—*Law Journal.*

Field's Table of, and Index to, Indian Statute Law.

Demy 4to., 42s. cloth.

A CHRONOLOGICAL TABLE of and INDEX to the INDIAN STATUTE-BOOK from the Year 1834, with a General Introduction to the Statute Law of India. By C. D. FIELD, M.A., LL.D., of the Inner Temple, Barrister at Law, and of H.M.'s Bengal Civil Service.

"Mr. Field has produced a work which will be extremely useful, not only to the profession in India, but to those practising in the Privy Council at home."—*Solicitors' Journal*.

Cutler and Griffin's Indian Criminal Law.

8vo. 6s. cloth.

AN ANALYSIS of the INDIAN PENAL CODE (including the Indian Penal Code Amendment Act, 1870), with Notes. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence, and Professor of Indian Jurisprudence at King's College, London, and EDMUND FULLER GRIFFIN, B.A., of Lincoln's Inn, Barrister at Law.

"It may be added that the code is just at present out of print, so that the production of an analysis at the present moment is especially opportune. Messrs. Cutler and Griffin have produced a useful little book, and produced it at a time when it will be especially useful."—*Solicitors' Journal*.

"This analysis of the Indian Penal Code seems to have conferred a great boon on the Indian practitioner, and will doubtless be of

use to professional men in England. It has a good index."—*Law Magazine*.

"This is a work intended for students and for practitioners in India. Knowing how well the same authors edited the Indian portion of Powell on Evidence, we should be content to take it on the faith of their reputation only. The mode of analysis is very clear and brings well forward the prominent features of the code."—*Law Times*.

Davis's Criminal Law Consolidation Acts.

12mo., 10s. cloth.

THE NEW CRIMINAL LAW CONSOLIDATION ACTS, 1861; with an Introduction and practical Notes, illustrated by a copious reference to Cases decided by the Court of Criminal Appeal. Together with alphabetical Tables of Offences, as well those punishable upon Summary Conviction as upon Indictment, and including the Offences under the New Bankruptcy Act, so arranged as to present at one view the particular Offence, the Old or New Statute upon which it is founded, and the Limits of Punishment; and a full Index. By JAMES EDWARD DAVIS, Esq., Barrister-at-Law.

Powell's Law of Inland Carriers.—Second Edition.

8vo., 14s. cloth.

THE LAW OF INLAND CARRIERS, especially as regulated by the Railway and Canal Traffic Act, 1854. By EDMUND POWELL, Esq., of Lincoln College, Oxon, M.A., and of the Western Circuit, Barrister at Law, Author of "Principles and Practice of the Law of Evidence." Second Edition, almost re-written.

"Mr. Powell's writing is singularly precise and condensed, without being at all dry, as those who have read his admirable Book of Evidence will attest. It will be seen, from our outline of the contents, how exhaustively the subject has been treated, and that it is entitled to be, that which

it aspires to become, the text book on the Law of Carriers."—*Law Times*.

"The two chapters on the Railway and Canal Traffic Act, 1854, are quite new, and the recent cases under the provisions of that statute are analyzed in lucid language."—*Law Magazine*.

Smith's Bar Education.

8vo., 9s. cloth.

A HISTORY of EDUCATION for the ENGLISH BAR, with SUGGESTIONS as to SUBJECTS and METHODS of STUDY. By PHILIP ANSTIE SMITH, Esq., M.A., LL.B., Barrister-at-Law.

Foreshores. Report of case *The Queen at the prosecution of Williams v. Nicholson*, for removing Shingle from the Foreshore at Withernsea. Heard at the Police Court, Hull, 31st May, 1870. 8vo. 1s. sewed.

A Letter to the Right Hon. the Lord High Chancellor concerning Digests and Codes. By WILLIAM RICHARD FISHER, of Lincoln's Inn, Esq., Barrister at Law. Royal 8vo. 1s. sewed.

Indian Civil Service Examinations. On reporting Cases for the Periodical Examinations by Selected Candidates for the Civil Service of India: Being a Lecture delivered on Wednesday, June 12, 1867, at King's College, London. By JOHN CUTLER, B.A., of Lincoln's Inn, Barrister at Law, Professor of English Law and Jurisprudence and Professor of Indian Jurisprudence at King's College, London. 8vo., 1s. sewed.

Cutler's Voluntary and other Settlements, including the 91st section of the Bankruptcy Act, 1869. By JOHN CUTLER, B.A., of Lincoln's Inn, Esq., Barrister at Law. 8vo. 3s. cloth.

Hamel's International Law, in connexion with Municipal Statutes relating to the Commerce, Rights and Liabilities of the Subjects of Neutral States pending Foreign War; considered with reference to the Case of the *Alexandra*, seized under the provisions of the Foreign Enlistment Act. By FELIX HARGRAVE HAMEL, Barrister at Law. Post 8vo. 3s. boards.

Francillon's Lectures, Elementary and Familiar, on English Law. FIRST and SECOND SERIES. By JAMES FRANCILLON, Esq., County Court Judge. 2 vols. 8vo. 8s. each cloth.

Pearce's Guide to the Inns of Court and Chancery; with Notices of their Ancient Discipline, Customs and Entertainments; an Account of the Eminent Men of Lincoln's Inn, the Inner Temple, the Middle Temple, and Gray's Inn, &c.; together with the Regulations as to the Admission of Students, Keeping Terms, Call to the Bar, &c. By ROBERT R. PEARCE, Esq., Barrister at Law. 8vo. 8s. cloth.

The Laws of Barbados. (By Authority.) Royal 8vo. 21s. cloth.

Le Marchant's Report of Proceedings of the House of Lords on the Claims to the Barony of Gardner, with an Appendix of Cases illustrative of the Law of Legitimacy. By Sir DENIS LE MARCHANT, of Lincoln's Inn, Barrister at Law. 8vo. 18s. boards.

Finlason's Dissertation on the History of Hereditary Dignities, particularly as to the Course of Descent and their Forfeiture by Attainder, with special reference to the Case of the Earldom of Wiltes. By W. F. FINLASON, Esq., Barrister at Law, Editor of "*Reeve's History of the English Law.*" 8vo. 5s. cloth.

"As an inquiry into an important question of peerage law it cannot fail to have much interest for not a few readers."—*Law Magazine*.

"Mr. Finlason discusses very carefully the modes in which dignities may be forfeited. We heartily recommend it as a pleasant study to laymen and lawyers."—*Law Times*.

Norman's Treatise on the Law and Practice relating to Letters Patent for Inventions. By J. P. NORMAN, M.A., Barrister at Law. Post 8vo., 7s. 6d. cloth.

Gray's Treatise on the Law of Costs in Actions and other Proceedings in the Courts of Common Law at Westminster. By JOHN GRAY, Esq., of the Middle Temple, Barrister at Law. 8vo., 21s. cloth.

The South Australian System of Conveyancing by Registration of Title. By ROBERT R. TORRENS and HENRY GAWLER, Esq., Barrister, 8vo., 4s. half cloth.

Elements of the Logical and Experimental Sciences considered in their relation to the Practice of the Law. 8vo. 14s. boards.

Legal Education. By W. A. JEVONS. A Paper read at the Social Science Congress at Leeds. 1871. 8vo. 6d. sewed.

Speech of Sir R. Palmer, Q.C., M.P., at the Annual Meeting of the Legal Education Association in the Middle Temple Hall, 1871; with a Report of the Proceedings. 8vo. 1s. sewed.

The Ancient Land Settlement of England. A Lecture delivered at University College, London, October 17th, 1871. By J. W. WILLIS BUND, M.A., Professor of Constitutional Law and History. 8vo. 1s. sewed.

The Practice of the Ecclesiastical Courts, with Forms and Tables of Costs. By H. C. COOTE, F.S.A., Proctor in Doctors' Commons, &c. 8vo. 28s. boards.

Baker's Compendium of the Statutes, Cases and Decisions affecting the Office of Coroner. By WILLIAM BAKER, Coroner of Middlesex. 12mo. 7s. cloth.

Greening's Forms of Declarations, Pleadings and other Proceedings in the Superior Courts of Common Law, with the Common Law Procedure Act, and other Statutes; Table of Officers' Fees; and the New Rules of Practice and Pleading, with Notes. By HENRY GREENING, Esq., Special Pleader. Second Edition. 12mo. 10s. 6d. boards.

Bowditch's Treatise on the History, Revenue Laws, and Government of the Isles of Jersey and Guernsey, to which is added the recent Acts as to Smuggling, Customs and Trade of the Isle of Man and the Channel Islands, Forms, Costs, &c. By J. BOWDITCH, Solicitor. 8vo. 3s. 6d. sewed.

Pulling's Practical Compendium of the Law and Usage of Mercantile Accounts: describing the various Rules of Law affecting them, at Common Law, in Equity, Bankruptcy and Insolvency, or by Arbitration. Containing the Law of Joint Stock Companies' Accounts, and the Legal Regulations for their Adjustment under the Winding-up Acts of 1848 and 1849. By ALEXANDER PULLING, Esq. of the Inner Temple, Barrister at Law. 12mo. 9s. boards.

Leigh's Abridgment of the Law of Nisi Prius. By P. BRADY LEIGH, of the Inner Temple, Barrister at Law. 2 vols. 8vo. £2: 8s. boards.

Gurney's System of Short Hand. By Thomas Gurney. First published in 1740, and subsequently improved. 17th Edition. 12mo. 3s. 6d. cloth.

"Gurney's is, we believe, admitted to be the best of the many systems, and a seventeenth edition appears to attest that fact."—*Law Times*.

Judge Redfield's Law of Railways. 3rd Edition (Boston, U. S.) 2 vols. royal 8vo. £3: 10s. cloth.

Washburn's Law of Easements. (Boston, U. S.) 1 vol. royal 8vo. £1: 2s. 6d. cloth.

Cutler on the International Law of Navigable Rivers. 8vo. 1s. 6d. sewed.

Linklater's Digest of, and Index to, the New Bankruptcy Act, 1869, and the accompanying Acts. By JOHN LINKLATER, Solicitor. Second Edition. Imperial 8vo., 3s. 6d. sewed.

Moseley's Law of Contraband of War; comprising all the American and English Authorities on the Subject. By JOSEPH MOSELEY, Esq., B.C.L., Barrister at Law. Post 8vo. 5s. cloth.

Dr. Deane's Law of Blockade, as contained in the Judgments of Dr. Lushington and the Cases on Blockade decided during 1854. By J. P. DEANE, D.C.L., Advocate in Doctors' Commons. 8vo. 10s. cloth.

The Acts for the Commutation of Tithes in England and Wales, with Notes, Observations, and an Epitome of the Law of Tithes. Second Edition. By J. T. SCHOMBERG, Esq., Q.C. 12mo. 7s. cloth.

A Practical Treatise on Life Assurance; in which the Statutes, &c., affecting unincorporated Joint Stock Companies are briefly considered and explained. SECOND EDITION. By FREDERICK BLAYNEY, Esq., Author of "A Treatise on Life Annuities." 12mo. 7s. boards.

Sewell's Treatise on the Law of Sheriff, with Practical Forms and Precedents. By RICHARD CLARKE SEWELL, Esq., D.C.L., Barrister at Law. 8vo. 21s. boards.

The Law relating to Transactions on the Stock Exchange. By HENRY KEYSER, Esq., Barrister at Law. 12mo., 8s. cloth.

Sewell's Municipal Corporation Acts, 5 & 6 Will. 4, c. 76, and 6 & 7 Will. 4, cc. 103, 104, 105, with Notes, and Index. By R. C. SEWELL, Esq., Barrister at Law. 12mo. 9s. boards.

A Legigraphical Chart of Landed Property in England from the time of the Saxons to the present Æra. By CHARLES FEARNE, Esq., Barrister at Law. On a large sheet, 6s. coloured.

Dwyer's Compendium of the Principal Laws and Regulations relating to the Militia of Great Britain and Ireland 12mo. 5s. 6d. cloth.

The Common Law of Kent; or the Customs of Gavelkind. With an Appendix concerning Borough English. By T. ROBINSON, Esq. THIRD EDITION, with Notes and References to modern Authorities, by JOHN WILSON, Esq. Barrister at Law. 8vo. 18s. boards.

The Marriage and Registration Acts, 6 & 7 Will. 4, caps. 85, 86; with Instructions, Forms, and Practical Directions. The Acts of 1837, viz. 7 Will. 4, c. 1, and 1 Vict. c. 22, with Notes and Index. By J. S. BURN, Esq., *Secretary to the Commission.* 12mo. 6s. 6d. boards.

A Treatise on the Law of Gaming, Horse-Racing, and Wagers. By FREDERIC EDWARDS, Esq., Barrister at Law. 12mo. 5s. cloth.

A Digest of Principles of English Law; arranged in the order of the Code Napoleon, with an Historical Introduction. By GEORGE BLAXLAND, Esq. Royal 8vo. £1 : 4s. boards.

A Treatise on the Law of Commerce and Manufactures, and the Contracts relating thereto; with an Appendix of Treaties, Statutes, and Precedents. By JOSEPH CHITTY, Esq. Barrister at Law. 4 vols. royal 8vo. £6 : 6s. boards.

Anstey's Pleader's Guide; a Didactic Poem, in Two Parts. The Eighth Edition. 12mo. 7s. boards.

Hardy's Catalogue of Lords Chancellors, Keepers of the Great Seal, and Principal Officers of the High Court of Chancery. By THOMAS DUFFUS HARDY, Principal Keeper of Records. Royal 8vo. 20s. cloth. (Only 250 copies printed.)

Pothier's Treatise on the Contract of Partnership: with the Civil Code and Code of Commerce relating to this Subject, in the same Order. Translated from the French. By O. D. TUDOR, Esq., Barrister. 8vo., 5s. cloth.

Browne's Practical Treatise on Actions at Law, embracing the subjects of Notice of Action; Limitation of Actions; necessary Parties to and proper Forms of Actions, the Consequence of Mistake therein; and the Law of Costs with reference to Damages. By R. J. BROWNE, Esq., of Lincoln's Inn, Special Pleader. 8vo., 16s. boards.

Archdeacon Hale's Essay on the Union between Church and State, and the Establishment by Law of the Protestant Reformed Religion in England, Ireland, and Scotland. By W. H. HALE, M.A., Archdeacon of London. 8vo. 1s. sewed.

"This is the production of a very able man, and will be read by lawyers as well as by divines with interest and advantage."—*Law Magazine*.

The Judgment of the Privy Council on Appeal in the Case of Hebbert v. Purchas. Edited by EDWARD BULLOCK, of the Inner Temple, Barrister at Law, Reporter in Privy Council for the Law Journal Reports. Royal 8vo., 2s. 6d. sewed.

Remarks upon the Agitation consequent on the Judgment of the Privy Council in the Case of Hebbert v. Purchas. By Canon ROBERTSON, M.A. 8vo., 1s. sewed.

Burder v. Heath. Judgment delivered on November 2, 1861, by the Right Honorable STEPHEN LUSHINGTON, D.C.L., Dean of the Arches. Folio, 1s. sewed.

The Case of Long v. Bishop of Cape Town, embracing the opinions of the Judges of Colonial Court hitherto unpublished, together with the decision of the Privy Council, and Preliminary Observations by the Editor. Royal 8vo., 6s. sewed.

The Judgment of the Dean of the Arches, also the Judgment of the PRIVY COUNCIL, in Liddell (clerk), and Horne and others against Westerton, and Liddell (clerk) and Park and Evans against Beal. Edited by A. F. BAYFORD, LL.D.: and with an elaborate analytical Index to the whole of the Judgments in these Cases. Royal 8vo., 3s. 6d. sewed.

Hamel's Law of Ritualism in the United Church of England and Ireland. With Practical Suggestions for Amendment of the Law, and a Form of Bill for that purpose. By F. HARGAVE HAMEL, Esq., of the Inner Temple, Barrister at Law. Post 8vo. 1s. sewed.

Archdeacon Hale's Inquiry into the Legal History of the Supremacy of the Crown in Matters of Religion, with especial reference to the Church in the Colonies; with an Appendix of Statutes. By W. H. HALE, M.A., Archdeacon of London. Royal 8vo. 4s. cloth.

"The archdeacon has shown that he possesses a legal mind in the good sense of the term."—*Law Magazine*.

The Judgment delivered by the Right Hon. Sir Robert Phillimore, D.C.L., Official Principal of the Court of Arches, in the Cases of Martin v. Mackonochie and Flamank v. Simpson. Edited by WALTER G. F. PHILLIMORE, B.A., of the Middle Temple, Fellow of All Souls College, and Vinerian Scholar, Oxford. Royal 8vo. 2s. 6d. sewed.

Judgment delivered by the Right Hon. Lord Cairns on behalf of the Judicial Committee of the Privy Council in the case of Martin v. Mackonochie. Edited by W. ERNST BROWNING, Barrister at Law. Royal 8vo. 1s. 6d. sewed.

The Privilege of Religious Confessions in English Courts of Justice considered in a Letter to a Friend. By EDWARD BADELEY, Esq., M.A., Barrister at Law. 8vo. 2s. sewed.

New Works and New Editions in Preparation.

The History and Law of Church Seats or Pews. By ALFRED HEALES, F.S.A., Proctor in Doctors' Commons. In 2 vols. 8vo.

Oke's Magisterial Synopsis. The Eleventh Edition. In 2 vols. 8vo.

The Law relating to Fraudulent Conveyances under the Statutes of Elizabeth and the Bankrupt Acts. By A. J. HUNT, of the Inner Temple, Barrister at Law, Author of "The Law of Boundaries, Fences and Foreshores." In 8vo.

The Poor Law Statutes and Digest of Poor Law Cases, from 43 Eliz. to 34 & 35 Vict. inclusive. By W. CUNNINGHAM GLEN, Esq., Barrister at Law. In 2 vols. 8vo.

A Compendium of the Laws of Joint Stock Companies of Foreign Countries, and especially those of GERMANY, FRANCE, SPAIN, ITALY and RUSSIA; with copious Notes and References, and accompanied by Translations of those parts of the Codes of those Countries that refer to Joint Stock Companies. By HENRY D. JENCKEN, Lincoln's Inn, Barrister-at-Law, etc. etc., one of the Authors of a Compendium of Modern Roman Law, etc. etc. In 8vo.

A Collection of Mortgage Precedents and Forms of Decrees, intended as a Companion Volume to the General Law of Mortgage.—By W. R. FISHER, Esq., of Lincoln's Inn, Barrister at Law. In 1 vol. royal 8vo.

Tomkins' Institutes of the Roman Law.—Parts II. and III. completing the Work. In royal 8vo.

A Guide to the Authorities on International Law, consisting of References to the various Subjects treated of in the Works of popular Writers upon the Law of Nations, &c. By EDWARD HERTSLET, of the Foreign Office. In 8vo.

A Treatise on the Law of Criminal Procedure. By JAMES EDWARD DAVIS, of the Middle Temple, Esq., Barrister at Law, Stipendiary Magistrate at Sheffield. In 1 vol. 8vo.

A Complete Code of the Law of Marine Insurance, embracing every variation of Principle, in England and America. By F. O. CRUMP and J. P. ASPINALL, of the Middle Temple, Esqrs., Barristers-at-Law. In 1 vol. 8vo.

Robson's Law and Practice in Bankruptcy. Second Edition. In 1 vol. 8vo.

Hamel's Laws of the Customs. A NEW EDITION. In 8vo.

The Law Examination Journal and Law Student's Magazine. No. 11, for Easter Term, 1872.

The Preliminary Examination Journal and Student's Literary Magazine. No. 6. May Examination.

The Bar Examination Journal. No. 3, for Trinity Term, 1872.



Price 1s., by post 1s. 1d., regularly published as soon as practicable after each Preliminary Examination in February, May, July and October,

The Preliminary Examination Journal

AND

STUDENT'S LITERARY MAGAZINE.

Edited by JAMES ERLE BENHAM, formerly of King's College London ;
Author of "The Student's Examination Guide," &c.

CONTENTS OF No. V.—February, 1872.

I. Examination Notices for 1872.—II. The Latin Language; the value of a knowledge of; its pronunciation, &c.—III. A few Remarks on the Study of French.—IV. Synopsis of leading Authors, Statesmen, Poets and Philosophers.—V.

The Questions of the Preliminary Examination of the 14th and 18th of February, with the Answers.—VI. Review of the February Examination.—VII. Correspondence.

CONTENTS OF No. IV.—October, 1871.

I. Examination Notices, &c.—II. What Endowments are essential to those aspiring to become Barristers and Solicitors?—III. Lectures on Language: Part III.—IV. Synopsis of Leading Authors, Statesmen, Poets and Philosophers.

—V. The Questions of the Preliminary Examination held on the 25th and 26th days of October, 1871, with the Answers.—VI. Review of the October Examination.—VII. Correspondence.

CONTENTS OF No. III.—July, 1871.

I. Miscellaneous Notices and Reviews.—II. Lectures on Language. Part II.—III. Synopsis of leading Authors, Statesmen Poets and Philosophers.—IV. The Questions of the Preliminary

Examination held on the 19th and 18th days of July, 1871, with the Answers.—V. Review of the July Examination.—VI. Correspondence.

CONTENTS OF No. II.—May, 1871.

I. Miscellaneous Notices and Reviews of Educational Works.—II. Lectures on Language.—III. Synopsis of leading Authors, Statesmen, Poets and Philosophers.—IV. The Questions of the Preliminary Examination held on the 10th and

11th days of May, 1871, with the Answers.—V. Review of the May Examination and Remarks on the Study of English History.—VI. Correspondence.

CONTENTS OF No. I.—February, 1871.

I. Introductory Remarks and Review of the past Examinations.—II. Essay on the Imperfections of the Orthography of the English Language.—III. Synopsis of Leading Authors, Statesmen, Poets and Philosophers.—IV. The Questions of

the Preliminary Examination held on the 15th and 16th days of February, 1871, with the Answers.—V. Review of the February Examination, and names of best books to be studied.—VI. Correspondence.

The Law Magazine and Law Review.

No. 1, NEW SERIES, for February (in future to be published monthly),
price 2s., contains:—

Introductory.—I. The Legal Education Question: by Andrew Edgar, LL.D.—II. The Judicial Committee of the Privy Council, with special reference to India: by Charles Collett, late Judge of the High Court of Madras.—III. International Copyright.—IV. The late Edwin Wilkins Field.—V. The Protest of Lord Chief Justice Cockburn.—VI. The New Law Courts.—Legal Gossip.—Summary of Events.

No. 2, NEW SERIES, for March, contains:—

I. Address of M. Rousset, Bâtonnier of the French Bar.—II. On the "Scotch Courts of Law" Report.—III. The late Chief Justice Le Roy.—IV. Tribunals of Commerce.—V. Appeal in Criminal Cases.—VI. The Law of Evidence in India.—Legal Gossip, &c.

London: BUTTERWORTHS, 7, Fleet Street, Her Majesty's Law Publishers.

Imprinted at London,
number Seven in Flete strete within Temple barre,
whylom the signe of the Hande and starre,
and the Hovse where liued Richard Tottel,
printer by Special patents of the bookes of the Common lawe
in the seuerall Reigns of
Kng Edw. VI. and of the qvenes Marye and Elizabeth.

2d Ed. Modern for Study
Mr. Sedgwick's New Method
Questions for Law Students on the Sixty Cases
Sedgwick's Notes of the Law of Torts and Property

Goldschmidt's Domestic and Practical of Equity
Monthly's American Code
Buchanan's Student's Examination Guide

Powell's Principles and Practice of the Law of Real Estate
Lawyer's Principles of Property
Barry's Treatise on the Principles of Conveyancing

Kerr's Action at Law
Hunter's Sale in Equity
Guthrie and Guthrie's History of Roman Law

The Bar Examination Journal
The Law Practitioner
The Preliminary Examination

Journal
Contents
Index
Table of Contents

